

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

DES MOINES UNION RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Harry Koger, Checkman, Baggage Department, shall be reimbursed for wage losses suffered on July 4, 1939 account carrier failing and refusing to permit him to work his regular assigned position."

EMPLOYEES' STATEMENT OF FACTS: "Harry Koger was on, before and after July 4, 1939 the regularly assigned incumbent of position in the Carrier's Baggage Department classified as 'Checkman,' rate \$4.84 per day. The assigned hours and days of work of Mr. Koger's position were 6:00 A. M. to 3:00 P. M. with one hour for lunch between 10:00 A. M. and 11:00 A. M., Friday to Wednesday each week, with Thursday as assigned day of rest. Mr. Koger's position is filled on the assigned day of rest (Thursdays) by a regularly assigned relief employee. Mr. Koger is paid pro rata rate for services performed on Sundays in accordance with the provisions of the exception to Rule 15 of the current Clerks' Agreement.

"On July 4, 1939 the Carrier instructed Mr. Koger that his services would not be needed, thus causing him to lose one day's pay at rate of time and one-half. The Carrier did, however, call an employee who holds no seniority rights on Mr. Koger's seniority roster on Mr. Koger's position and worked and paid said employee on July 4, 1939.

"Claim was duly filed with Carrier that Mr. Koger be paid one day at rate of time and one-half for July 4, 1939. Carrier declined to pay claim and the dispute has been handled with highest designated officer of the company."

CARRIER'S STATEMENT OF FACTS: "In addition to the Baggage Agent there are eight men assigned to the work of handling mail and baggage at the Des Moines Union Ry. Co. baggage room at Des Moines. These men are regularly assigned for six days per week except in weeks when holidays occur, the force being reduced on such holidays as provided for in Rule 25. The Baggage Agent posted the following notice on the bulletin board in regard to the holiday July 4, 1939:

"The following employees will not work July 4th, account legal holiday, R. Mullen, H. Koger, and E. Miller."

"Having need of an extra man from 6:00 A. M. to 9:00 A. M. during which period there is handled over one-third of the trains arriving and departing each 24 hours, the Baggage Agent called an extra man, Wright, for this three hours work on July 4th. This man was allowed to work four hours for which he was paid at time and one-half rate.

a lesser number of hours worked on a holiday when the employe is not regularly assigned to work on the holiday but is called for the lesser number of hours worked.

"Rule 13, the 'Call' rule under which the extra man was called, reads:

'(a) Except as provided in paragraph (b) this rule, employes notified or called to perform work not continuous with, before, or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

'(b) Employes who have completed their regular tour of duty and have been released, required to return for further service, may, if the conditions justify, be compensated as if on continuous duty.'

"The Carrier contends that the extra holiday work performed was not within the regular assignment of the employe but was covered by Rule 13, being work 'not continuous with, before, or after the regular work period.' It concedes that regular employe, instead of the extra man, should have been called in accordance with seniority rules but has already made adjustment by payment to the claimant of four hours pay at time and one-half rate for work not performed on this holiday.

"As no further adjustment should be necessary we respectfully request the Board to deny the claim in this case."

There is in evidence an agreement between the parties bearing effective date of January 1, 1925.

OPINION OF BOARD: The employe, in whose behalf the claim here is presented, holds a position necessary to the continuous operation of the railroad, as contemplated by rule 15. In other words, the position which he occupied contemplates seven days of work per week, but the occupant thereof is assigned one day off in seven, preferably Sunday, but may be on a week day, and on emergent occasions the employe's services may be exacted for the entire seven days. If required to work on his regular assigned day off, such employe is entitled to be paid at the rate of time and one-half for that day, be that Sunday or a week day. In this instance the employe's regular day off was Thursday, which he enjoyed, but since the employe was not permitted to work on a specified holiday (Tuesday July 4th) he was deprived of the wage which the day's employment contemplated. The carrier contends that other rules modify rule 15, and that the carrier's course is justified.

We are not of the view advanced by the carrier. The agreement contemplated that since the carrier was entitled to the services of a regular seven day a week employe on Sunday at the usual rate of pay, it could not by the indirection involved in its course in this instance effect abrogation of claimant's right to work on the specified holiday and receive proper compensation therefor. In Award No. 561, not factually essentially different, where we interpreted a like rule, we held that the carrier could not "blank holidays" and thus deprive the employe of his right to serve and be paid for that day.

The claim is that the employe be reimbursed for wage loss suffered on July 4, 1939, which, as we understand from the record, would be one-half day at time and one-half rate, since, as further appears, he already has been paid for one-half day at time and one-half his regular rate.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated provisions of rule 15.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.