Award No. 4260
Docket No. CL-4209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement—

(1) When it failed to compensate furloughed Group No. 1 Employes in Seniority District No. 31 at punitive rates, while working on Sundays relieving other employes on vacation.

(2) That John G. Worthington be paid for the difference between pro rata and punitive time for January 5, 1947—February 2, 1947—April 20, 1947 and April 27, 1947; also Berthold H. McBride, for the dates, April 6 and 13, May 18 and 25, June 1 and 8, July 27, August 3, 10, 17, 24 and 31, 1947.

EMPLOYES' STATEMENT OF FACTS: On January 11, 1947 Carrier posted a Bulletin at Washington Avenue Station (Seniority District No. 31), giving instructions on relieving employes for vacation, advising that it was not necessary to pay furloughed employes time and one-half for Sunday work when used to relieve employes on vacation. This bulletin was not posted and the practice was not made effective in any other seniority district.

Worthington and McBride, furloughed Group 1 employes, were used as vacation relief workers and performed service as such on the Sundays indicated, being paid straight time for such Sunday service.

POSITION OF EMPLOYES: There is an agreement between the parties bearing the effective date of April 1, 1945, from which the following rule is quoted:

"RULE 44

SUNDAY AND HOLIDAY WORK

Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and required to work

and in the following paragraph we will show that all of the applicable provisions of that agreement were complied with.

The assignment of the senior Group 2 employe holding Group 1 seniority to fill vacancies caused by employes in Group 1 being on vacation was strictly in accord with that portion of Article 12(b) of the Vacation Agreement reading, "When the position of a vacationing employe is to be filled and a regular employe is not utilized, an effort will be made to observe the principle of seniority," and the method of payment was in full accord with that portion of Article 10 (a) quoted above.

Seniority was respected by assigning the senior employe in Group 2. He was protected from any loss of earnings as he could not be paid less than the earnings of his regular assignment and at the same time was given the opportunity of increasing his earnings, as he was allowed the rate of any position worked if it was greater than his own.

The Employes' request for greater remuneration in this case is violative of Article 12(a) of the Vacation Agreement which states, "Except as otherwise provided in this agreement, a carrier shall not be required to assume greater expense because of granting a vacation that would be incurred if an employe were not granted a vacation and paid in lieu thereof." Notwithstanding this provision, if at any time the relief employe would have earned more by remaining on his regular assignment, he would have been allowed the greater amount, which would have been in excess of the amount allowed the regular employe had he been paid in lieu of being granted a vacation.

During the negotiations that resulted in the National Vacation Agreement being consummated, Employe representatives stated their purpose in seeking vacations for their constituents was humanitarian, i. e., they wanted the employes to have time off with pay for rest and recuperation which they otherwise could not afford. However, in the instant case, they are endeavoring to secure an increase in the earnings of the claimants by reason of employes being granted vacations notwithstanding the fact that the claimants were properly compensated under the provisions of the Vacation Agreement which is controlling. In other words, they are attempting to place a penalty on the carrier for granting vacations with pay.

We have shown that our actions were in strict accord with the controlling agreement, leaving no basis for the claim and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim is for the difference between the pro rata and punitive rates of compensation applicable to the services rendered by the Claimants Worthington and McBride on the dates specified. These services were performed on Sundays and when the regular occupants of the positions were on their vacations. The Claimants rely upon Rule 44 of the Agreement, effective April 1, 1945, which is the so-called Standard Sunday and Holiday Work Rule, as promulgated by the U. S. Labor Board in 1923. The application of this Rule would support the Claim. The Carrier, on the other hand, contends that the situation is governed by Articles 10 (a) and 12 (b) of the National Vacation Agreement of December 17, 1941, and the interpretations and applications thereof. If the Carrier's position is sound the Claimants were properly compensated and their Claim is without merit.

We think it has been definitely put at rest that the provisions of the National Vacation Agreement with which we are here concerned did not automatically abrogate the terms of specific Rules Agreements covering the same subject matter. Until modified by the parties, the provisions of existing agreements still prevail. See Awards Nos. 2340, 2484, 2537, 3022, 3733, 3795.

The Record does not support the inference that the force and effect of Rule 44 of the current Agreement have been relaxed by mutual understandings.

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 Rule 44 of the Agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.