Award No. 4830
Docket No. CL-4827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rule 4-A-2 on the Maryland Division, by compensating extra employes at straight time rate on holidays.

(b) Extra employes be allowed the difference between straight time allowed and time and one-half for January 1, 1947, and February 22, 1947. (Docket E-411.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants held positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case are employes holding positions covered by the Scope of this Rules Agreement having seniority standing on the Maryland Division of the Carrier.

Prior to January 1, 1947, such extra employes were compensated at the rate of time and one-half for all services performed on the seven recognized holidays as referred to in Rule 4-A-2 which is quoted for convenient reference:

Rule 4-A-2:

"(a) 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 and Christmas, (provided when any of the above holidays fall on Sunday, the day

said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreement concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that, under the applicable Agreement, the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of the matter and the establishment of a record of all of the same.

(Exhibit not reproduced.)

OPINION OF BOARD: The only question to be determined in this dispute is whether extra employes are entitled to the time and one-half rate for holiday work instead of the straight time rate paid by the Carrier.

The record shows that the Carrier, prior to January 1, 1947, paid extra employes at the time and one-half rate for holiday work on the Maryland Division. This was discontinued after that date and such employes have been paid the straight time rate for holiday work since that time. The Organization contends that this is a violation of the Agreement and that the time and one-half rate should be paid.

The Claimants in the present case hold positions on the extra boards but have no regularly assigned work periods. When temporarily assigned to regular positions, they are paid the rate of the position assigned under Rule 4-E-2, current Agreement.

The rules applicable to this dispute are Rules 4-A-2(a), 4-A-1(a), current Agreement, which provide:

> "4-A-2(a) 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 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 who are regularly assigned to such service, will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regular assigned seventh day off duty, will be paid at the rate of time and one-half. When such assigned day off duty is not Sunday, work on Sunday will be paid for at the straight time rate."
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> "4-A-1(a). Unless otherwise provided in this Agreement, eight consecutive hours on duty, exclusive of the meal period, shall constitute a day's work for which eight hours' pay will be allowed. Time worked in excess of eight hours in any twenty-four hour period

will be considered as overtime and paid for at the rate of time and one-half. A relief or extra employe who performs relief work in two or more positions within a twenty-four hour period will be paid straight time for the first eight hours worked in each position. For time worked in excess of eight hours on any of the positions so relieved, he will be paid time and one-half."

An examination of Rule 4-A-2(a) clearly shows that all employes are entitled to be paid at the time and one-half rate for work performed on the enumerated holidays. We find nothing within the terms of this rule which excludes extra employes as such from its operation.

Rule 4-A-1(a) relates to work performed in excess of eight hours in any twenty-four hour period. We find nothing in this rule that purports to modify the Sunday and holiday rule (4-A-2) in any manner. The Carrier cites the "modified or called" rule (4-A-6d). This is a general rule dealing with the subject expressed and does not have, of itself, the effect of modifying the special rule dealing with Sunday and holiday work.

We hold, therefore, that under the rules of the current Agreement the employes are entitled to be paid for holiday work at the time and one-half rate, they not being within the exception set out in Rule 4-A-2(a). See Decision No. 210, Clerical and Miscellaneous Forces' Board of Adjustment; Interpretation No. 1 to Decision No. 1621, United States Railroad Labor Board.

The Carrier relies upon a letter of settlement bearing date of May 17, 1944. It appears that differences had arisen as to the proper application of the rules for compensating extra employes. A settlement of the claims was had pursuant to the terms of this letter. The Carrier contends that the letter acknowledges the correctness of the position of the Carrier in the present dispute and that it is binding upon the Organization. The Organization contends otherwise.

The letter of settlement states in part: "These subjects involve claims where extra employes performed service on seven consecutive calendar days or instances where extra employes performed service for more than eight consecutive hours." This statement, standing alone, indicates that the claims being settled and giving rise to the letter were entirely foreign to the issue presently before us. It was agreed in another portion of the letter that extra employes who worked seven consecutive days would be paid the time and one-half rate on the seventh day. The Carrier contends that the time and one-half rate should be paid for holiday work only when the seventh consecutive day of service falls on a holiday.

The letter also contains the following: "It was agreed at the meetings referred to that Rule 4-A-6(d) of the Agreement now in effect applies in the case of extra employes required to perform service on Sundays and Holidays and that Clerks' Regulation 4-A-5 applied to such service in advance of May 1, 1942. It is understood, therefore, that these claims insofar as they involve the performance of services for periods not exceeding eight hours on Sundays and Holidays are withdrawn." The effect of this provision is to make Rule 4-A-6(d) rather than Rule 4-A-5 applicable to Sunday and holiday work. Considering this fact along with the provision quoted in the preceding paragraph, it is evident that the parties were not discussing the Sunday and holiday rule. Under the rules of contract construction we should, if we can, give effect to all provisions of the contract. We must conclude, therefore, that the agreed upon substitution of Rule 4-A-6(d) for Rule 4-A-5 was for the purpose of applying the former rather than the latter to extra employes notified or called on Sundays to perform extra work as distinguished from extra board employes assigned to temporary positions with a daily tour of duty of eight hours. Such an interpretation would also be consistent with that part of Rule 4-E-2 providing: "Extra employes will be compensated at the rate of the position to which temporarily assigned." It would likewise be consistent with the withdrawal of claims of less than eight hours for Sunday and holiday work by extra employes, such claims not being under consideration and subject to the letter of settlement of May 17, 1944.

We conclude that the letter of settlement does not relate to extra board employes assigned temporarily to regular positions. Consequently, such employes are entitled to time and one-half for holiday work.

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 Employes involved in this dispute are respectively carrer and employes 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 Agreement was violated.

AWARD

Claim sustained as to employes described in the last paragraph of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st Day of March, 1950.