Award No. 5267
Docket No. CL-5312

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated and continues to violate rules of the current working agreement between the above named parties by failing and refusing to pay W. A. Hood and others similarly affected time and one-half for holiday work and that

(b) W. A. Hood and others affected be paid the difference between the pro rata rate as paid and the rate of time and and one-half and

(c) that said W. A. Hood and others affected be likewise reimbursed for violations on subsequent holidays.

EMPLOYES' STATEMENT OF FACTS: The parties to this dispute entered into an agreement, effective as of September 1st, 1949 covering among other matters the rate of pay for holiday work.

The carrier has failed and refused to apply to certain of its employes the proper rate of pay for holiday work.

The Organization in conference, confirmed by its letter to Mr. J. M. Prickett, Vice President, dated November 17, 1949, protested the failure to properly pay these employes.

POSITION OF EMPLOYES: Prior to September 1, 1949, the following rules were in effect and governed the application of the issue now in dispute—

"Rule 19 (b) When the established starting time of a regular position is changed one hour or more for more than six (6 consecutive days, or from a six (6) to a seven (7) day assignment or vice versa for a period of four (4) weeks or more, the incumbent may, within ten (10) days thereafter, upon thirty-six (36) hours advance notice, exercise seniority rights, if qualified, to any position held by a junior employe, and other employes displaced by reason of his exercising seniority may exercise their seniority in the same manner. Seniority may be exercised in like manner by an employe when, during his occupancy of a regular position, the

by proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half, except that employes on regular seven-day **positions** (see Note, Rule 39-1) and those who relieve them shall be compensated on the same basis as on other days of their regular assignment.'

You proposed a rule for penalty time payment for all holiday work. We could not agree to this due to the wording of Article II, Section 3 (d) whereby no change was to be made in existing holiday provisions, and you finally stated that as the Chicago Agreement of March 19th authorized no change in the provisions, you would accept the rule we proposed if we would leave the word 'assignments' and not 'positions' and that you would submit the matter to the Adjustment Board for interpretation.

We advised that it was our position, inasmuch as the word 'assignments' in the rule as originally written actually meant 'positions' even though the word 'assignments' in the Chicago agreement referred to the number of days assigned for employes to work, it did not change the meaning of that word as used in our rule and that, as the rule meant 'positions' we would only pay straight time to employes (regardless of which days they might be **assigned** to work, whether they included holidays or Sundays, or not.

The agreement, as made, effective September 1, 1949, provides:

'Sixth—Amend Rule 41 to read as follows:

Holiday Service: Work performed on the following legal holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that 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 for at the rate of time and one-half, **except that employes on regular seven (7) day assignments and those who relieve them shall be compensated on the same basis as on week days.**'

It is still our position that Rule 41, as originally written, and as amended, means that employes filling positions regularly assigned to be **worked seven days** shall be compensated at straight time rates for holidays, the same as on other days which may not be holidays.

The claim is, therefore, denied."

Claim should be denied.

Copies of agreements referred to are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: In order to effectuate the provisions of the National 40-Hour Week Agreement, Rule 41 of the Agreement between Carrier and the Clerks' Organization was amended by Memorandum Agreement effective September 1, 1949, eliminating reference to Sunday work so that the same now reads:

"HOLIDAY SERVICE

Rule 41. Work performed on the following legal holidays: namely, New Year's Day, Washington's Birthday, Decoration Day,

Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that 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 for at the rate of time and one-half, except that employes on regular seven (7) day assignments and those who relieve them shall be compensated on the same basis as on week days." (Underscoring added.)

Prior to September 1, 1949, Claimant was assigned seven days per week. Thereafter, in order to comply with the Memorandum Agreement of 1949 the assigned days of work of all employes previously assigned seven (7) days per week were changed to five with two (2) relief days being established. In the same notice those positions upon which work would be performed seven days per week were designated.

It is the contention of the Employes that the underscored language of Rule 41, above-quoted, is superfluous inasmuch as there no longer are any seven (7) day assignments. Upon this reasoning it is asserted that Claimant should be compensated at time and one-half for work performed on Labor Day, 1949.

The Carrier contends that the word "assignments" is synonymous with "positions" and hence the exception applies.

It is a primary rule of contract construction that all of the language of an agreement is to be given effect in interpreting the same. Clearly, to disregard completely the language of the exception in Rule 41 we would have to find it entirely inconsistent with the terms and purposes of the Agreement in which it appears. The change in Rule 41 and other amendments made to the basic Agreement effective April 1, 1947 by the Memorandum Agreement effective September 1, 1949, were designed to accommodate the basic Agreement to the National 40-Hour Week Agreement. One of the provisions of the latter Agreement was "Existing provisions relating to pay for holidays shall remain unchanged" and "Existing provisions that punitive rate will be paid for Sunday as such will be eliminated". To disregard the exception in Rule 41 would require us to hold, in effect, that the parties in amending Rule 41 only accomplished the one purpose, i.e., eliminating the provision for payment of punitive pay for Sundays as such and did not accomplish the purpose of continuing existing provisions relating to pay for holidays. We view the contention of the Employes as attempting to draw a distinction in meaning between the words "assignments" and "positions" which does not exist insofar as the wording of the exception in Rule 41 is concerned. To those familiar with the provisions of schedule agreements and terminology in the railroad industry no citation of authority is necessary to establish that frequently the words are used interchangeably and treated as being synonymous. Apparently, the Employes would agree that if the wording of the exception were "employes regularly assigned to seven-day positions" instead of "employes on regular seven-day assignments", there would be no basis for claim. We believe that the meaning would be the same, if either phrase were used. The "Note" to Rule 39-1 contained in the Memorandum Agreement recognizes the continued existence of seven-day positions. We hold that the exception in Rule 41 refers to such positions. This view is entirely consonant with the other provisions of the Memorandum Agreement and the purposes which it was designed to accomplish. It follows that the claim should be denied.

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 Employes involved in this dispute are respectively Carrier 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.