

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that the Carrier shall, by appropriate award and order be required to pay to J. C. Morgan the difference between straight time rate, was paid, and the time and one-half rate, to which he is entitled by provisions of Regulation 4-H-1 of the effective agreement between the parties, for services performed on Labor Day, September 4, 1950.

EMPLOYEES' STATEMENT OF FACTS: J. C. Morgan was awarded by bid a Relief Assistant Train Director position, with rest days Wednesday and Thursday each week. He was not qualified, and it was necessary that he post, which he did from August 26 to September 12, 1950, except September 6th and 7th and other rest days of the position.

On Labor Day, September 4, 1950, he posted on this position under Regulation 4-P-1(b), for which he was compensated at the straight time rate. He performed but 40 hours of service that week. He filed time slip for time and one-half for Labor Day, September 4, 1950 which was denied and he was paid straight time rate.

POSITION OF EMPLOYEES: There is an Agreement in effect between the parties, Regulations effective September 1, 1949, Rates of Pay effective February 1, 1951.

The following Regulations are invoked in support of this instant case:

REGULATION 4-H-1

(a) "If conditions of business permit, employes shall be excused on New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas. When any of the above holidays fall on a Sunday, the day observed by the State, Nation or by proclamation, shall be considered the holiday for the purpose of this regulation (4-H-1).

(b) Time worked by employes on the following 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 a 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, with a minimum of two (2) hours at the time and one-half rate."

OPINION OF BOARD: The issue is whether the Claimant is entitled to be compensated at the rate of time and one-half for the posting he performed on Labor Day, September 4, 1950.

Paragraph (b) of Regulation 4-H-1 provides that "Time worked by employees" on the holiday "shall be paid at the rate of time and one-half."

While not denying the Claimant was an employee the Carrier claims that posting cannot be considered as "time worked." The Board must find that posting, while for the benefit of the employee, also benefits the Carrier. The employee was present on the employer's premises pursuant to provisions of the contract and did perform certain services in connection with learning the job under instruction and supervision. The Carrier asserts under Paragraph (d) of Regulation 2-N-1 this "exercise of seniority" by the employee "shall not result in any expense other than as set forth in Regulation 4-P-1" and that the last mentioned Regulation requires merely the payment of the straight time rate for the posting done on the holiday.

A reading of Regulation 4-P-1 (b) shows that the employee "shall be paid for learning the position at the rate which he received on the position he last vacated."

The "rate" of his former position of Leverman for holidays was time and one-half just as it is for all holidays and not straight time. The Claimant was not "excused" from work on this holiday. He would have worked on his former position and the position on which he was posting was bulletined to work this holiday.

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 Employees involved in this dispute are respectively Carrier and Employee 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.