Award No. 7396
Docket No. MS-6663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

(1). That the Carrier violated the effective agreement when on November 22, 1951 it blanked positions held by certain employes of the Stockton, Fresno, Bakersfield, Hobart, San Bernardino, Needles, Winslow and La Junta Ice Plants and denied employment to the incumbents of these positions.

(2). That the Carrier shall now be required to pay such employes eight (8) hours at time and one half at their respective rates of pay for each day employes were ex-parte denied employment.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated September 1, 1947, Amended September 1, 1949, known as the Ice Plants Agreement, copy of which is on file with the Board, and is by reference made a part of Statement of Facts.

On November 21, 1951, the carrier issued oral instructions to certain of its employes at the plants referred to in employes statement of claim to the effect that their position would be blanked the following day, it being Thanksgiving day, a legal holiday. In effect blanking a regular assigned day of employes work week assignment.

Employes protested such action by the Carrier in blanking these positions, and made claims of schedule violation, the Carrier has denied the claims. The operation of the carriers ice plants is a twenty-four (24) hour service, seven (7) days per week.

POSITION OF EMPLOYES: As indicated in employes statement of facts, the carrier did on November 22, 1951 blank the positions of employes who held a bulletined assignment which did include such holiday as one of the five (5) days that said employes were required to work.

It is contended that concerned employes held regular assignments which included the legal holiday, November 22, 1951, as a day of their bulletined assignment, and therefore, the carrier would have a demand right that such

Thanksgiving Day, November 22, 1951, is improper and contrary to the Board's well established principle that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Third Division Awards 4815, 5049, 5078, 5580, 5978, 5995 and many others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employes in the instant dispute is entirely without support under the Agreement rules and should, for the reasons expresed herein, be either dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or brief submitted by the Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains a 7-day operation at its 8 ice plants covered by this Agreement. Article VII Section 9 of the Agreement which is headed "Legal Holidays" requires the payment of time and one-half for "work performed" on designated legal holidays including Thanksgiving Day.

Immediately prior to Thanksgiving Day 1951 the total force in active service at these 8 ice plants was 253, of whom 51 had Thanksgiving day as one of their assigned rest days. By written notices issued at each plant (ranging from two to seven days prior to Thanksgiving Day) the Carrier announced the holiday and stated that "only the employes listed below (84 of the employes at the 8 ice plants) will be on duty." Only these 84 employes so listed worked the holiday and they were paid time and one-half pursuant to Section 9.

Claim is made on behalf of all employes who did not work the holiday and who held bulletined work assignments which included a Thursday.

At the time of claim and for several years before, it was the practice on the designated holidays to release as many of the ice plant employes as possible in accordance with the needs of the service and the operation, this without compensation for the day off. In the absence of any evidence to the contrary, and there is none, we take it that the skeleton crew of 84 employes who worked the holiday was sufficient to meet the needs of the service and the operation required on Thanksgiving Day 1951. This is to find that there was an actual cessation or deferment of the work of Claimants' positions on the holiday.

The Organization's submission contains 15 sample bulletins which consistently indicate that prior to this claim the Carrier simply specified rest or lay off days in bulletins but thereafter specified "recognized holidays", in addition to rest or lay off days, as excluded from the bulletined assignments.

The precise claim is that all those assigned Thursday as a work day by bulletin were, as a class, entitled to work the holiday. There is no specific claim that any particular Claimant had a preferential right over any employe who did work the holiday.

The claim must, therefore, stand or fall upon the general question whether a holiday is a work day when the holiday falls within a bulletined assignment which does not specifically exclude holidays from the work week.

First. The essential question presented by the claim is whether, in bidding for their assignments, Claimants were reasonably justified in assuming that holidays were work days.

The bulletins did not then, in so many words, exclude holidays from the work days of the assignments. But Claimants were charged with notice of the terms of the Agreement under which the bids were made.

Second. Apart from Section 9, the structure of the rules establishing the work week and the hours of service furnish some guide to the status of holidays.

Section 9 of Article VII read in conjunction with Section 16 makes it plain that designated holidays are not compensable days as such whether worked or not. And Section 10 makes it plain that nothing in Article VI constitutes a guarantee of any certain number of days per week. Finally, while Section 8 of Article VII forbids the reduction of regularly established working hours below eight, the same section goes on to except from the guarantee the hours not worked up to eight on a designated legal holiday and puts them on the same footing with time off taken by an employe for his own convenience and time less than eight hours not worked by an employe on a day not scheduled to work.

All of these understandings, although collateral to the point at issue, do indicate that holidays were considered by the parties to be non-compensable days off.

Third. It is true that the holiday rule itself (Article VII Section 9) does not provide in so many words that the designated holidays are days off. But such is the common understanding of what a holiday is; and, by imposing a penalty for work performed on holidays, Section 9 aims to discourage, although it does not altogether prohibit, holiday work. In a continuous service operation such as this, one would hardly expect to find agreement upon a categorical prohibition of holiday work.

At most, therefore, we are presented with an uncertainty or an ambiguity in the Agreement on the question whether the designated holidays were understood to be regular work days or non-compensable days off. Such being the case, the practice under the Agreement affords the best evidence of what the understanding between the parties was. And the evidence of practice shows that as many employes as possible, compatible with holiday service requirements, have been given non-compensable time off on the designated holidays.

In view of the foregoing considerations we are unable to conclude that, in bidding for their assignments, Claimants were reasonably justified in assuming that Thanksgiving Day was an assigned workday.

Fourth. In this view the holiday time off was neither a reduction in force within the meaning of Article III Section 7 nor a suspension of work after starting any assigned work period for the purpose of absorbing overtime within the meaning of Article VII Section 13.

No real overtime was absorbed or performed by any outsider, because the work of Claimants was non-essential or deferrable on the holiday and hence was non-existent on that particular day. And there was no real reduction of force, for the lay offs were effected for the sole purpose of providing the time off required by Section 9 and there is no claim that the preferential requirements of Article III Section 7 were not met.

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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1956.