

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, 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 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(a) The Carrier violated the Rules of the Working Agreement which bears an effective date of January 1, 1950 and the National Agreement of August 21, 1954 relating to paid Holidays when it failed to compensate Ticket Sellers Howard Broyles and Melvin L. Evans at the proper rate for services performed on Thursday (Thanksgiving Day), November 25, 1954, and

(b) That the Carrier should now be directed by a proper order of the Board to pay to Messrs. Broyles and Evans an additional one and one-half day's pay for services performed on that day.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Howard Broyles is the regular assigned occupant of Relief Ticket Seller Position No. 5, Tuesday through Saturday, with Sunday and Monday as assigned days of rest. He was awarded this position on August 29, 1950 under Bulletin No. 1430. In the carrying out of his assignment, he relieves the following positions:

Tuesday	Vahey	Position No. 16
Wednesday	Holtz	Position No. 17
Thursday	Toenges	Position No. 18
Friday	Severns	Position No. 19
Saturday	Townsend	Position No. 20

Mr. Melvin L. Evans is the regular assigned occupant of Relief Ticket Seller Position No. 11, Tuesday through Saturday, with Sunday and Monday as assigned days of rest. He was awarded this position on May 12, 1953 under Bulletin No. 1745. In the carrying out of his assignment, he relieves the following positions:

Tuesday	Bender	Position No. 11
Wednesday	Deelo	Position No. 12
Thursday	Hitt	Position No. 13
Friday	Schulmann	Position No. 14
Saturday	Sheffold	Position No. 15

The principle involved, claim for punitive rate for work performed on an excepted position on a holiday, was before the Board in Award 6564 and the claim was denied. Rest days of the two excepted positions, which are included in the Scope rule of the agreement but excluded from pay rules, were included in bulletined relief assignments and the claimants were the successful applicants. Upon being assigned to the positions as a result of their voluntary action, they assumed all the conditions of the positions relieved, including rate of pay.

During the handling on the property the Employees contended that Article II, Section 1 of the August 21, 1954 agreement supports the claim because the claimants were daily rated employees. That argument is without merit because on the day in question they relieved employees who are not subject to that agreement.

They called attention to the fact that the claimants were paid at the punitive rate on the same holiday in 1953. Payment in that manner was made through error and erroneous payments do not change the proper application of the effective rules. Award 6564 affirmed the fact that payment at the pro rata rate, which the claimants have received, is proper in instances such as are involved in this case, leaving the claim without support.

There is no valid basis for the claim from any standpoint and it should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimants are regularly assigned to two Relief Ticket Seller positions, Tuesday through Saturday, with rest days Sunday and Monday. In each assignment, one of the positions relieved is that of Ticket Agent, a partially excepted position under Rule 1 of the Agreement. Each of the Claimants relieved one of these partially excepted positions on Thanksgiving Day, Thursday, November 25, 1954, and was paid at the straight-time rate. Each now claims an additional half-day's pay under Rule 44 of the Agreement, and an additional full-day's pay under Article II of the National Agreement, dated August 21, 1954.

Rule 44 (b) provides:

"(b) Holiday Work. Work performed on the following legal holidays, namely, . . . Thanksgiving Day . . . shall be paid for at the rate of time and one-half."

Article II of the National Agreement, dated August 21, 1954, provides:

"Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee: . . . Thanksgiving Day . . ."

The problem here is essentially the same as that presented in Award 7425, decided this date. In each case, rules granting certain rights to employees covered by the Agreement must be accommodated to rules excepting certain positions from those same rules, where the employees involved are usually entitled to the rights in question, but are assigned to an excepted position either temporarily or in relief. There is a distinction between the two cases in that in Award 7425 the Claimant was assigned to work the partially excepted position on his rest day, which was not a regular occurrence; in this case the Claimants were working the partially excepted positions as

part of their regular relief assignments. However, we do not think this distinction leads to a different result when the principles followed in Award 7425 are applied. Here, just as Rule 40 in that case, Rules 44 and Article II clearly intend to grant rights to employes such as Claimants, whose positions, as such, are not excepted from the Agreement. As we held in Award 7425, and for the same reasons, we cannot find in Rule 1 a clear intent to deprive them of such rights when they are assigned to work in relief of the regular occupant of a partially excepted position.

**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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.