

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

RUTLAND RAILWAY CORPORATION

STATEMENT OF CLAIM: It is the claim of the System Committee of the Brotherhood that:

(1) Carrier violated the Agreements between the parties when, on December 24, 1954, it put out instructions that all clerical forces would work Monday, January 3 (a specified holiday) and be paid pro rata rates, and refused and still refuses to compensate such employes at the rate of time and one-half for work performed on such date under Rule 17 (b) of Supplemental Agreement No. 11, effective July 1, 1951, and refused to pay such employes a pro rata day's pay under Article II, Section 1 of the August 21, 1954 Agreement; therefore,

(2) Carrier shall now be compelled to pay such employes the difference between the amount received at the pro rata rate and the time and one-half rate provided under Rule 17 (b) for work performed on Monday, January 3, 1955, and an additional day's pay of eight hours at the pro rata rate for the holiday, as provided in Article II, Section 1, August 21, 1954 Agreement.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 24, 1954, Carrier's General Manager wrote the following communication:

"Messrs. L. G. Bucklin
W. E. Lovett
E. H. Lundin
R. E. Devine
J. E. Marceau
J. E. Laughlin
S. A. Clifford
A. T. Danver

"With the agreement of November 4, 1954, with the Non-Operating Brotherhoods becoming effective January 1st, 1955, all clerical forces will work Monday, January 3rd, and shall be paid pro rata rates.

"Please arrange accordingly."

It is the position of the Carrier that working clerical forces on January 3, 1955 at pro rata rates did not constitute a violation of the Agreement between the parties, but rather was in accordance with understanding upon which the agreement was consummated, and it is significant that other organizations parties to the agreement agree with such understanding.

All relevant facts and arguments in this case have been made known to the employees' representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The instant claim resulted from instructions issued by Carrier's General Manager to department heads under date of December 24, 1954, reading as follows:

"With the agreement of November 4, 1954, with the Non-Operating Brotherhoods becoming effective January 1st, 1955, all clerical forces will work Monday, January 3rd, and shall be paid pro rata rates."

The claim herein is coextensive with Carrier's instructions and contemplates compensating all clerical employees affected thereby, as follows, for Monday, January 3, 1955:

1. "The difference between the amount received at the pro rata rate and the time and one-half rate provided under Rule 17 (b) for work performed on Monday, January 3, 1955," and
2. "An additional day's pay of eight hours at the pro rata rate for the holiday, as provided in Article II, Section 1, August 21, 1954 Agreement."

The second paragraph of Rule 17 (b) of the Supplemental Agreement effective July 1, 1951, provided as follows:

"When a regularly assigned employe has an assigned rest day other than Sunday and one of the holidays specified in the rule falls on such rest day, the following work day will be considered the holiday."

The Carrier herein was not a party to the National Agreement executed at Chicago, Illinois, on August 21, 1954. However, on November 4, 1954, Carrier entered into an agreement with the Co-operating Brotherhoods in which it adopted the terms and conditions of Article II of the August 21, 1954 National Agreement, along with certain other Articles thereof, to be effective as of January 1, 1955.

As to that part of the claim herein covering the difference between the amount received at the pro rata rate and the time and one-half rate for work performed on January 3, 1955: Under Rule 17 (b), which was continued in effect, the claim will be sustained based on Awards 7433, 7434 and 7479 but without prejudice to the provisions of the August 21, 1954 National Agreement. Since Rule 17 was changed in negotiations between the parties effective August 1, 1955, and since this part of the instant claim pertains to Monday, January 3, 1955, we do not here pass on the interpretation and application of the parties' Agreement after August 1, 1955.

That part of the claim herein for an additional day's pay at pro rata rate for January 3, 1955, will be denied based upon this Division's rulings in Awards 7433, 7434 and 7479.

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, in accordance with Opinion, the claim for difference between pro rata and time and one-half rates will be sustained under Rule 17 (b); otherwise claim will be denied.

AWARD

Claim sustained and denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1957.