Award No. 8232
Docket No. CL-7564

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it assigns positions requiring service, duties or operations on seven days each week to work daily except assigned rest days and holidays and requires employes assigned to those positions to work holidays on a call basis.

2. Carrier shall designate seven day positions and fill such positions, during regular assigned hours, no less than eight (8) hours per day for seven days each week.

3. Employes A. J. Gall, Ticket Clerk; A. C. Matthews, Relief Mail and Baggage Handler; W. R. Storla, Relief Yard Clerk; and all other employes affected shall be compensated for the difference between what they were paid and eight (8) hours at the penalty rate for each holiday worked on positions regularly requiring service on seven days each week, retroactive to December 25, 1952.

EMPLOYES' STATEMENT OF FACTS: At Mitchell, South Dakota, the Carrier maintains a number of positions coming within and covered by the Clerks' Rules Agreement. Such positions are identified by various title classifications, position numbers and the duties assigned thereto. Those positions are assigned to work five, six or seven days per week, depending upon the service requirements of the individual position. Among the positions requiring service on seven days each week are the three positions involved in this dispute.

Position No. 18—Yard Clerk
Position No. 117—Ticket Clerk
Position No. 783—Mail and Baggage Handler

Prior to September 1, 1949, the effective date of the 40 Hour Week Agreement, the above named positions, as well as other positions requiring

entitled to also retain something which was eliminated or discontinued through the elimination of a schedule provision when the other added benefits and advantages were written into the Agreement.

There is no schedule rule support for the claim which the employes have presented and the Carrier respectfully requests that the claim be denied. Many awards have held that it is not within the province of the Board to render awards having the effect of writing new rules into the schedule agreement or applying interpretations to the existing rules which would have the same result.

All data contained herein has been presented to the employes.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves three claimants:

A. J. Gall, Ticket Clerk position, 117
A. C. Matthews, Relief Mail and Baggage Handler, position 783
W. R. Storla, Relief Yard Clerk, position 18

All three positions, Organization asserts, are "positions on which service, duties or operations are required on seven days each week and evidence of this is shown by the fact that the rest days of those positions are a part of regular relief assignments."

The claim before us (part 3) is that Claimants Gall, Matthews and Storla "shall be compensated for the difference between what they were paid and eight (8) hours at the penalty rate for each holiday worked on positions regularly requiring service on seven days each week, retroactive to December 25, 1952."

Specifically, the claim arose over Carrier's method of compensating Claimants on December 25, 1952 and January 1, 1953—both of which holidays occurred on a Thursday.

It is Carrier's position that effective September 1, 1949, "there was no longer in existence any provision (of the Agreement) requiring any position to be filled on a holiday, as any holiday within an employe's work week on which a holiday falls may be excluded from that work week in accordance with the provisions of Rule 15 (e), which reads:

> "Nothing herein shall be construed to permit reduction of days for regularly assigned employes covered by this agreement below five (5) days per week, except if within the five (5) days constituting a work week, one of the seven (7) holidays * * * occurs, the work week may be reduced to the extent of such holiday."

Carrier further notes it paid Claimants 5' 20" at the rate of time and one half for "the holiday call' in accordance with Rule 34 (d).

A portion of Rule 34 (d) reads:

> "Employes notified or called to perform work on Sunday or on one of the seven (7) holidays specified in Rule 35 (b) will be allowed five hours and twenty minutes (5' 20") at the rate of time and one-half for four (4) hours' work or less. * * *"

With respect to Rule 15 (e), previously quoted, it is Organization's position that it "continues the intent and meaning of similar rules in previous agreements and on its conception it was intended to apply to positions that did not require service on seven days of each week. It was not intended to apply to positions where service was required seven days each week nor was it applied to such positions.

"To place any other application on Rule 15 (e)," Organization continues, "would make a mockery of Rule 27(d). * * * Nowhere in Rule 15(e) can there be found any language providing that a work week may be reduced by a part or a portion of a holiday and the Employes contend the rule was never intended to be so applied."

The pertinent portions of Rule 27(d) are:

"Rule 27—Forty Hour Week

"Note—The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes.

"(a)—General

"There is hereby established for all employes, except those occupying positions listed in Rule 1(b), a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. This rule is subject to the following provisions:

"(d)—Seven Day Positions

"On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

Argument is offered in behalf of Organization that Bulletins covering positions held by Claimants Matthews and Storla, and dated June 25, 1952 and September 10, 1951, respectively, show both positions to be "worked daily except rest days and holidays," while Bulletin 119, dated June 25, 1952 and covering Claimant Gall offers no exception for holidays, that bulletin showing his position to work "daily except Saturday and Sunday (rest days)."

Argument offered in behalf of the Organization thus concludes that holidays being excepted by Bulletin in the cases of Claimants Matthews and Storla, their claims here would fall, but December 25, 1952 and January 1, 1953, both recognized holidays, having occurred on a Thursday—one of Claimant Gall's assigned work days—his position "was assigned to work full time on the two holidays here involved * * *, there being no applicable exceptions under Rules 27 (d) and 26, both of which guarantee eight (8) consecutive hours as a day's work, except only as there specified," and that thus Gall's claim should be sustained.

We cannot agree with carrier's statement that Rule 15(e) "specifically excludes holidays as work days." That rule says simply that the work week **may** be reduced to the extent of such holiday. It is an option that rests with the Carrier, and Organization's conceding that Claimant Gall was "notified to work only 4 hours" on the two holidays in question we must and do conclude that Carrier thus exercised its option under Rule 15(e).

While admittedly Gall's bulletined assignment contained exceptions only as to rest days, not as to holidays, we cannot here hold that the language of a bulletin can vitiate a Rule of the Agreement.

The fine point remaining in Gall's case is the argument on behalf of the Organization that Rule 15(e) "obviously contemplates that the work week may be reduced for the full holiday—'to the extent of such holiday'—as the petitioner contends, not for just a part of such holiday. Organization relies on its claim that there are no applicable exceptions under Rule 27(d) and

26, both of which guarantee eight (8) consecutive hours as a day's work, except only as there specified."

This Division has ruled many time on this point, and on arguments identical with those of the Organization here. Award 7294 (Carter) covers this issue specifically:

> "* * * A holiday within a work week creates an exception to the five-day work week rule. It may be blanked in whole or in part, or it may be blanked and the occupant given a call to perform the necessary work. This holding is supported by the language of Rules 25(e) and 26(b) which state in effect that an employe required to work on a holiday shall be paid at the rate of time-and-one-half with a minimum allowance for two hours. There is no basis for the contention that an employe used on a holiday is entitled to work eight hours at the pro rata rate. Awards 7033, 7136. He is entitled to eight hours pay at the pro rata rate if he does not work on a holiday, and he is entitled to time-and-one half for the time worked, in addition thereto, with a minimum allowance of two hours. (5' 20" at the rate of time and one-half for four (4) hours' work or less, in the case now before us.) The rules governing work on holidays are special and controlling."

Six Awards were offered or cited on behalf of the Organization in support of this claim. Five of these covered incidents and agreements prior to September 1, 1949 (effective date of the applicable agreement here) and one covered an incident on November 19, 1949 involving payment of overtime. None was in point.

Numerous denial Awards, on the other hand—many of them with Edward F. Carter as Referee—are cited by Carrier. They are, for the most part, closely related or directly on the points here involved.

The Agreement itself, as well as the preponderance of prior Awards of this Division indicate a denial Award.

The claim will 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 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

Claims (1), (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1958.