Award No. 8506
Docket No. TE-8045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 Company that:

T. W. Bennett, H. L. Martin, T. C. Hand, R. H. Haines, J. A. Anderson, H. G. Carlson, C. L. Agens, and all other Telegraph Department employes are entitled to be paid at the time and one-half rate in addition to their regular day's pay for working on Sept. 7, 1954, if Labor Day holiday, September 6, 1954, fell on their second assigned rest day, as provided for in Regulation 4-H-1(c).

EMPLOYES' STATEMENT OF FACT: The above claim was listed for discussion with the Superintendent by the Local Chairman at meeting held on October 4, 1954. The Superintendent denied the claim and a Joint Submission was prepared by the Local Chairman and Superintendent on October 29, 1954 for further handling with the General Manager. (Joint Submission offered as Exhibit A-1.)

This claim was docketed for discussion with the General Manager by the General Chairman at meeting held on November 22, 1954 and was denied by the General Manager in letter dated December 6, 1954. (Listing with General Manager and denial offered as Exhibits A-2 and A-3.)

The claim was listed for handling with the System on December 23, 1954 for meeting held on January 4, 1955 and denied by the System on January 19, 1955. On February 9, 1955, General Chairman advised the System that he did not concur with their decision and requested that they join in submitting the claim to the N.R.A.B., Third Division, as provided for in the Railway Labor Act. (Exhibit A-4). The System advised the General Chairman it was not willing to join with him in submitting the claim to the N.R.A.B. Thus having exhausted all means to settle the claim on the property, the same is hereby submitted to your Honorable Board for consideration.

All the Claimants listed in the subject and all other Telegraph Department employes adversely affected held Block Operator assignments which worked daily except Sunday and Monday. On Monday, September 6, 1954,

of Agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employes in this dispute would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that the Agreement does not provide for the compensation requested by the Claimants in this dispute.

It is respectfully submitted, therefore, that the claim here before your Honorable Board should be denied.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly-assigned, hourly-rated employes whose work assignment was Tuesday through Saturday with Sunday and Monday as rest days. In 1954, Labor Day occurred on Monday, September 6, the second of Claimants' assigned rest days. They did not work on the holiday but did work the following day, Tuesday, September 7, 1954, and were paid for eight hours time at the pro rata rate.

Claim is here made for an additional eight hours at the rate of time and one-half for the work performed on Tuesday, September 7, 1954, based upon Rule 4-H-1 (c) of the Agreement of September 1, 1949, as amended. Rules 4-H-1 (b) and (c) provide:

> "(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 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.
>
> "(c) When one of the holidays specified in Paragraphs (a) and (b) of this Regulation (4-H-1) falls on the second assigned rest day, other than Sunday, of an employe's work week, the day following will be considered his holiday."

There is also in evidence Article II of the National Agreement dated August 21, 1954, Sections 1 and 3 of which read as follows:

> **"ARTICLE II—HOLIDAYS**
>
> **"Section 1.** Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the follow-

ing enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

"**Note:** This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays.

"**Section 2.** * * *

"**Section 3.** An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

"Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

Petitioner, on behalf of Claimants, asserts that since Labor Day occurred on the second of employes' assigned rest days, under Rule 4-H-1 (c) the following day, i.e., Tuesday, September 7, was to be considered these employes' holiday and for their work that day they should be paid at the time and one-half rate under 4-H-1 (b). Furthermore, Petitioner contends that these employes are entitled to the pro rata rate of pay (in addition to the premium rate) having qualified under Sections 1 and 3 of Article II.

The Carrier's position is that Rule 4-H-1 (c) was superseded by Article II of the 1954 Agreement and that these employes in order to be eligible for pro rata pay under Section 1 of Article II must show that the actual holiday occurred on a workday of their workweek.

The question of whether Claimants here may qualify for pro rata pay under Article II, Section 1, including the "Note" thereto, has been answered by the Board in Awards 7433, 7434, 7479, 7722, and 8320. It was there held and affirmed that in order to qualify for the pro rata pay under Section 1 the designated holiday must have occurred on a workday of the workweek of the employe asserting the claim. The following excerpts from Award 7433 (Referee Cluster) are in point:

"We find no ambiguity in the first paragraph of Section 1. In order for an employe to receive the pay provided therein, one of the seven listed holidays must fall on a **workday of** his workweek. It is implicit in the claim before us that pay is being sought for employes in cases where one of the seven listed holidays falls on a rest day rather than a workday of their workweeks. Thus, there is no basis for the claim in the language of the first paragraph alone. Any support for the claim must come from the Note. The language of the Note is less clear and is subject to interpretation. Is the provision in Rule 47 (c) that when a holiday falls on an employe's rest day, 'the

following work day will be considered his holiday' an 'agreement under which any other day is substituted or observed in place of' one of the listed holidays, within the meaning of the Note? We think not. Rule 47 provides for precisely the same seven holidays as does Section 1. No provision is made for substituting or observing any other day in place of any of these seven holidays. The provision is that if one of the holidays falls on an employe's rest day, the following work day shall be 'considered' his holiday. It is so considered for the purpose of providing him time and one-half pay if he works on that day. 'Considering' the work day as a holiday for that purpose is not substituting or observing any other day in place of the holiday in the sense in which we understand that phrase to be used in the Note."

We agree with the foregoing reasons and conclusions and hold that that part of the instant claim based on Article II must fail. But we also take note of the following findings in Award 7433, (approved by other Awards herein cited):

"A holding that the holiday pay provisions of Section 1 do not apply in the circumstances of this case does not, contrary to Claimant's contention, change Rule 47 (c). Rule 47 (c) intended that the workday following the rest day be considered as a holiday for the purposes of that rule; it continues to be so considered . . . Under the rules cited in this case, where a holiday falls on an employe's rest day, his holiday for the purposes of Rule 47 is the first workday after his rest day; for the purposes of Article II, Section 1 of the National Agreement, it is the day on which the holiday actually falls."

Thus we are confronted with the question of whether the Awards of this Division, cited herein as controlling, do not, in fact, lend support to that part of this claim where time and one-half is claimed for work performed on the workday following the rest day upon which the holiday fell, under the provisions of Rule 4-H-1 (c). This the Carrier vigorously denies, pointing to the denials of those claims where the alleged sole question was whether Article II required payment for a workday following a rest day upon which the holiday occurred. It may be noted, however, that in Award 7433 we said that when "a holiday falls on an employe's rest day, his holiday **for the purposes of Rule 47** is the first workday after his rest day; . . ." And in Award 7434 we find the Board saying,

"* * * The parties agreed in 1949 that the workday following the holiday should be 'considered' as the employe's holiday for purposes of providing premium pay for work performed on holidays. That was the extent of their agreement and that agreement is still being given effect on the property. The parties did not reach an agreement at that time as to what should be considered the same employe's holiday for purposes of an additional pro rata day's pay. That issue was considered by them, or their representatives, in 1954 and they agreed on Section 1 which clearly provides that with regard to the latter kind of holiday pay, an employe qualifies only if certain named holidays fall on a workday."

Awards 7722 and 8320 (without a Referee) held Claimants entitled to the difference between the pro rata and time and one-half rates under special contract rules similar to Rule 4-H-1 (c) while at the same time denying claims based on Article II.

It is clear from an examination of the Board's findings and conclusions in these cases that, contrary to Carrier's belief, we have held that the 1954 Agreement does not abrogate and set aside such special rules as 4-H-1 (c) but that such rules remain in full force and effect only for those purposes intended by the parties to the Agreement. It is just as clear that claims for the benefits of Article II of the 1954 Agreement will be denied when one of the national holidays designated by the 1954 Agreement occurs on a rest day and claim for pro rata pay under Article II is then made because of the "shifting holiday" rule of the basic agreement. Notwithstanding denials of such claims, the controlling Awards also appear to hold that a claim for premium pay under the terms of the basic agreeement and, more specifically, under such special rules of limited application as 4-H-1 (c), may be allowed for work performed on a "shifted" holiday. (Awards 7722, 8320.)

In accordance with prior Awards of this Division, we find and hold that Claimants here should have been paid at the rate of time and one-half for work performed on Tuesday, September 7, 1954, under the requirements of Rule 4-H-1 (c) but were not entitled to the pro rata rate under Article II of the National Agreement of 1954 because the Labor Day holiday for the purposes of the latter Agreement fell not on a workday of employes' workweek but on a rest day.

The Carrier here has also raised an objection as to unnamed persons asserting a right to compensation under the claim for "all other Telegraph Department employes." The Board agrees that the language of the statement of claim is too broad and inclusive and should have been prepared with more specificity. Nevertheless, in view of the relatively small number of employes on this one property that are eligible for payment under the special rule and for the further reason that the language of Rule 4-T-1 (a) of the basic agreement, upon which the Carrier relies, is not susceptible to an interpretation requiring the naming of the individual claimants, we find the objection without merit. (Awards 6167, 5107 and 5078.)

In view of the foregoing, the claim will be allowed only to the extent of the difference between the amount represented by the pro rata rate (already paid) and the time and one-half rate for work performed on Tuesday, September 7, 1954, under the requirements of Rule 4-H-1 (c) of the basic agreement.

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 4-H-1 (c); 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 4th day of November, 1958.