

Award No. 8542

Docket No. CL-8190

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Article II, Section 1, of the Agreement of August 21, 1954, by failing to pay eight hours' pay at the pro-rata hourly rate of freight trucker to various employees, Davenport Avenue Freight Station, Cleveland, Ohio, Lake Division, for Memorial Day, Fourth of July, and Labor Day, 1954.

(b) Certain named claimants, regularly assigned as extra freight truckers, be paid eight hours' pay at the pro-rata rate of freight trucker for each of these Holidays as claimed. (Docket C-759)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical Other Office, Station, and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case are the incumbents of positions of Extra Freight Trucker at the Davenport Avenue Freight Station, Cleveland, Ohio, on the Carrier's Lake Division. The names of the claimants and the dates

Furthermore, even assuming that the definition of Claimants' work week as contained in Rule 5-G-1 (i) is modified by the fact that the Carrier's operation at Davenport Freight Station is a six-day operation, working Monday to Saturday, inclusive, even under this interpretation the workdays immediately preceding or following the holidays in question would be Saturday and Tuesday. Consequently, those Claimants who performed no service on Saturday and Tuesday in the particular weeks involved would not be entitled to holiday compensation under any circumstances.

In summary, Carrier desires to state that Claimants are not entitled to receive compensation for the holidays in question because they cannot bring themselves within the purview of Article II, Section 1 of the August 21, 1954 Agreement in that they are not "regularly assigned" employees as that term is used in the aforesaid Agreement.

Furthermore, the Claimants did not work on the day preceding and the day following the holidays in question, consequently, they are not entitled under any circumstances to the compensation claimed.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application 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 Employees 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 of August 21, 1954 does not provide for compensation on holidays 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 employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants herein are not regularly assigned employees as contemplated by Article II, Section 1 of the August 21, 1954

Agreement, and claims will be denied based on Awards 7432, 8254, 8320 and others.

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

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 28th day of November, 1958.