Award No. 9084
Docket No. SG-9072

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

UNION RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Union Railroad Company that:

(a) Carrier violated the agreement when it refused to compensate the employes listed in part (b) hereof at the overtime rate for work performed on February 22, 1955, Washington's Birthday.

(b) Carrier be required by appropriate award and order of the Third Division to allow difference between straight-time rate received and the overtime rate of the following employes:

M. Mayfield	D. E. Robinson
J. Fedele	H. C. Potts
R. S. Gallagher	J. R. Berringer
W. F. Freidhof	B. E. Layton
W. Hebrank	D. C. Wilson
J. L. Shafer	F. W. Bobnar

EMPLOYES' STATEMENT OF FACTS: All of the claimants worked on February 22, 1955, and for this work they were paid the straight-time rate.

There exists between the parties to this dispute an agreement dated October 1, 1950, Amended, so far as this case is concerned, by an agreement signed at Chicago, Illinois, August 21, 1954, between participating Eastern, Western, and Southeastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, which agreement is commonly referred to as the "August 21, 1954, National Agreement."

All evidence and material used in this submission was used or made known to Carrier during handling of the case on the property.

POSITION OF EMPLOYES: Rule 3, paragraph (b) of the October 1, 1950 agreement, insofar as this claim is involved, reads as follows:

In First Division Award 16962 with Referee McMahon, the claimants contended that arbitrary terminal miles should be added to the actual miles of the run, the claim was denied stating:

> "For this Division to find otherwise, where **there is no ambiquity in the applicable rules,** and no such contention is made, would be in complete disregard of Rule 1 (b) and would be tantamount to rewriting Rules 2 (f) and 3 (f) of the respective schedule rules. This Division does not have that authority. * * *"

There are well over a hundred other such awards of the Divisions consistent with the above in their Findings and Opinions.

The Carrier asserts that the claim of the employes is entirely without support under the agreement rule and should be denied.

All that is contained herein is either known or available to the employes or their representatives.

(Exhibits not reproduued.)

OPINION OF BOARD: Claims before us are premised on a request that the employes herein named, were improperly paid by Carrier for work performed on Washington's Birthday, February 22, 1955. The employes were compensated for a day at pro rata rate plus pay for work performed on a holiday at the regular rate instead of the time and one-half rate as provided for holiday service as shown by Rule No. 3½, adopted from the National Agreement, Article II, effective May 1, 1954.

Carrier contends the employes were properly compensated for the day in question under the provisions of Rule 3 (b) of the 1950 Agreement. In that Agreement no recognition is listed as Washington's Birthday being a holiday. Carrier argues that since Rule 3 (b) makes no provision for Washington's Birthday as a holiday, certainly Rule 3½ (a) by including this day as a holiday, has no effect on Rule 3 (b), and was not intended to change its provisions or the practice of paying employes for work performed on a holiday.

The Carrier, from the record before us, recognized that the day in question was a holiday, as provided in Rule 3½ (a), by compensating the employes for an extra day's pay at pro rata rates. We conclude that when the National Agreement, Rule 3½ in the Agreement here, was adopted effective May 1, 1954, it specifically made Washington's Birthday a recognized holiday for all intents and purposes, as is shown by a reference to the National Agreement and to which this Carrier is a party, and agreed to by Carrier.

The employes are entitled to a sustaining award as alleged.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute;

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 Claims should be sustained.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1959.

DISSENT TO AWARD NO. 9084, DOCKET NO. SG-9072

Award 9084 is based upon the following erroneous conclusion of the majority:

> "* * * We conclude that when the National Agreement, Rule 3½ in the Agreement here, was adopted effective May 1, 1954, it specifically made Washington's Birthday a recognized holiday for all intents and purposes, as is shown by a reference to the National Agreement and to which this Carrier is a party, and agreed to by Carrier."

Rule 3½, supra, did not make Washington's Birthday a recognized holiday for the intent and purpose of requiring Carrier to pay employes at the rate of time and one-half for work performed thereon because, in paragraph (e) thereof, the parties provided, in clear and unambiguous language, as follows:

> "Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday."

Rule 3 (b) of the Agreement here deals with the rate to be paid for work performed on certain and specific holidays, and provides as follows:

> "(b) All employes * * * will be paid at the rate of time and one-half **for work performed on * * * the following legal holidays:** New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas. * * *" (Emphasis added.)

It is significant that Washington's Birthday is not included among the holidays specified in Rule 3 (b) and the record shows that work performed thereon was never paid for thereunder. Paragraph (e) of Rule 3½, therefore, required a denial of the instant claim because no provision of either the National Agreement or of the Agreement here provides for payment at the rate of time and one-half for work performed on Washington's Birthday; consequently, this Division is without authority to require such payment.

The record also shows that, on July 25, 1955, certain pages of the Agreement between the parties were reprinted to incorporate therein the changes in rules necessitated by the August 21, 1954 National Agreement. The parties made no change in Rule 3 (b), hence recognizing that Washington's Birthday was not a holiday for the intent and purpose of requiring Carrier to pay

employes at the rate of time and one-half thereunder for work performed on Washington's Birthday.

In Award 9084, the majority ignored the clear and unambiguous language of paragraph (e), Rule 3½ of the Agreement here, as well as the fact that the parties themselves made no change in Rule 3 (b) when the Agreement was revised on July 25, 1955. The authority of this Division is restricted to interpreting the Agreement as made by the parties.

For the foregoing reasons, Award 9084 is in error and we dissent.

/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ J. F. Mullen