Award No. 9195
Docket No. CL-8772

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

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

(a) The Carrier violated the Agreement when it failed and refused to pay Clerk Mr. M. L. Morris at pro-rata rate for the recognized Holiday, on December 26, 1955, and

(b) The Carrier shall now be required to pay Claimant Mr. M. L. Morris one day at pro-rata rate of pay of Chief Bulk Delivery Clerk position.

EMPLOYES' STATEMENT OF FACTS: Switching Clerk Mr. Newman was on vacation December 19, 20, 21, 22 and 23, 1955. Diversion Clerk Mr. Nix was on vacation December 26, 27, 28, 29 and 30, 1955. Chief Bulk Delivery Clerk Mr. Waites "moved up" for the two weeks and worked the positions of the two employes who were on vacation. During the two weeks in question, Claimant Mr. M. L. Morris, extra clerk, was under Agreement Rules assigned to the position of Chief Bulk Delivery Clerk.

Monday, December 26, 1955 was a recognized Holiday. Claimant Morris did not work on that day and was not compensated for the day under rules hereinafter quoted and discussed.

Claim was duly filed and appealed up to the highest officer of the Carrier designated for such purpose, who denied the claim. Conference was held May 7, 1956 and the claim was again denied.

All correspondence in connection with the claim is attached hereto and identified as Employes' Exhibits "A" through "F".

POSITION OF EMPLOYES: There is in effect an Agreement between the parties bearing effective date of March 1, 1942 (Except for rules revised effective September 1, 1949, Pursuant to Agreement of March 19, 1949, 40-Hour Agreement).

Rule 39 (b) referred to by Petitioners must be read in conjunction with Rule 39 (a) and for ready reference we quote Rule 39, paragraphs (a) and (b):

"RULE 39—HOLIDAY WORK

(Revised Effective September 1, 1949)

(a) Work performed on the following legal holidays—namely: New Year's Day, Washington's Birthday, Memorial Day (April 26th), Fourth of July, Labor Day, Thanksgiving Day, 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.

(b) Where such holiday falls on the second assigned rest day, other than Sunday, of an employe's work week, the day following will be considered his holiday."

We do not see where this rule has any connection with the case. This rule is applicable only to work performed on a holiday and provides the method of payment, i. e., time and one-half. The governing rule is Section 1, Article II of the August 21, 1954 agreement which provides for holiday pay, as such. This rule is very clear. It provides that each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate to the position to which assigned for each of the numerated holidays when such holiday falls on a workday of the workweek of the individual employe. Claimant was an extra employe holding no regular assignment, hence is not entitled to holiday pay, as such, for December 26, 1955.

Petitioners' General Chairman admits in letter above quoted that extra men are not entitled to holiday pay as such. Therefore, if claimant had worked December 26th, all he would have been entitled to was a day at time and one-half which would have been paid him. He did not work and is due nothing. We again point out that Petitioners made no objection to payment to the Chief Bulk Delivery Clerk of his rate for holiday pay as such on December 26th, thus admitting he was assigned to the job as of that date.

We have conclusively proven that claimant was an extra employe, working from the extra board under the rules of the agreement and as such is not entitled to holiday pay for December 26th.

The claim is without merit and we request it be declined.

All data herein contained has been made available to Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that claimant herein held the status of extra employe at the time he was used to fill a temporary vacancy in the position of Chief Bulk Delivery Clerk while the regular incumbent thereof was filling a vacation vacancy. Based on Awards 7430, 7431 and 7432, among others, the claim herein 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of *THIRD DIVISION*

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.