

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

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

1. That the Carrier violated the rules of the current working Agreement, effective January 1, 1953 as well as the Agreement of November 3, 1954, when it failed to properly compensate Relief Clerk J. F. Muise, Boston District, for work performed on December 26, 1954 and January 2, 1955, which were holidays for this employe.

2. That the Carrier shall now be required to allow Relief Clerk J. F. Muise 8 hours' pay for each of the holidays in question, in addition to compensation representing the difference between the straight time rate allowed him and the time and one-half rate to which he was entitled for work performed on each of these holidays.

EMPLOYEES' STATEMENT OF FACTS: The current working Agreement between the parties, effective January 1, 1953, contains a provision in RULE 55. Sunday and Holiday Work, which provides that Group 1 employes shall be paid at the rate of time and one-half for work performed on the following eight legal holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, and Christmas; and when such holiday falls on Sunday, the day observed shall be considered the holiday. The rule further provides that when a regularly assigned employe has an assigned rest day other than Sunday and one of the specified holidays falls on such rest day, the day following will be considered that employe's holiday for which he will be paid at the rate of time and one-half for work performed.

On November 3, 1954, Agreement was entered into between the parties, Article II—Holidays, Section 1 of which provides that effective May 1, 1954, when one of the seven enumerated holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanks-

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned relief clerk with Friday and Saturday rest days. Christmas of 1954 and New Year's Day of 1955 fell on Saturday, the second of his rest days. He worked on the day following each of said holidays: Sunday, December 26 and January 2, and was paid at the pro rata rate. Claim is made for pay, at time and one-half rate under Rule 55 and for additional payment for eight hours at pro rata rate under Article II of the Agreement effective May, 1, 1954, which we shall refer to as the Holiday Pay Agreement.

Rule 55 establishes the rate of pay for WORK PERFORMED on a holiday; to-wit: time and one-half rate. Paragraph (d) of the rule provides:

"When a regularly assigned employe has an assigned rest day other than Sunday and one of the holidays specified in this rule falls on such rest day, the day following will be considered the holiday."

Claimant had an assigned rest day other than Sunday; each of the holidays fell on such rest day; therefore the day following must be considered the holiday. Claimant worked on each of those days and was entitled to pay at time and one-half rate therefor.

The Holiday Pay Agreement does not purport to amend Rule 55 or be a substitute for it. It does not apply to work performed on a holiday but provides for holiday pay as such, independent of pay for any work performed. Section 5 thereof states specifically that nothing therein shall be construed to change existing rules or practices governing the payment for work performed by an employe on a holiday. It does not affect the claim for such work here.

The Holiday Pay Agreement requires holiday pay, independent of work performed, "when such holiday falls on a work day of the work week of the individual employe." The holiday here did not fall on such work day, but Petitioner relies on the Note to Section 1 of the Agreement, providing:

"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."

Thereunder it is urged that the provisions of Rule 55 (d), which is quoted supra, apply to the Holiday Pay Agreement and claimant should receive holiday pay for the two Sundays as "substituted" or "observed" days.

The most that may be said in support of such contention is that the Note is ambiguous as to such application. In several well considered awards under like rules it has been held that such Note did not make provisions like those of Rule 55 (d) so apply to the Holiday Pay Agreement. We think the wording of the Note and the rules and the declared purpose of the Holiday Pay Agreement both support those awards.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated only in failure to pay claimant at time and one-half rate for work performed on the two holidays involved.

AWARD

Claim sustained for pay at time and one-half rate instead of pro rata rate for the two Sundays worked and claim denied for eight hours pay for the dates in question.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1960.