

Award No. 9577
Docket No. MW-8550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated Article II of the August 21, 1954 Agreement when it failed and refused to allow Terminal Division Bridge and Building Foremen eight hours' holiday pay for Washington's Birthday, February 22, 1955;

(2) Each Terminal Division Bridge and Building Foreman who received compensation credited to February 21 and 23, 1955, be allowed eight hours' pay at their respective pro-rata rates account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants were regularly assigned to daily rated positions of Bridge and Building Foremen on the Carrier's Terminal Division.

Each of the Claimants received compensation credited by the Carrier to the work days immediately preceding and following the February 22, 1955 holiday (Washington's Birthday).

In August of 1954 the parties consummated an Agreement providing for eight hours' straight time pay for each of the seven designated holidays not worked.

The Carrier has refused to allow the Claimant Bridge and Building Foremen eight hours' pay at their respective straight time rates for the aforementioned holiday.

The Agreement in effect between the two parties to this dispute dated May 15, 1942, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

3. The Guarantee Rule only guarantees 40 hours in connection with employe's work week, consisting of 8 hours a day, 5 days per week, as specified in the rule.

4. Subject employes received their 40 hours in the work week, which is all that the Guarantee Rule entitles them to.

5. To allow this claim would be granting subject employes, in future, 48 hours' pay for only working 32 hours in any week in which a holiday occurs.

6. The Emergency Board's report only allowed holidays off with pay in order to "maintain normal take-home pay in weeks in which a holiday occurs", and did not provide that employes already enjoying holidays off with pay should receive another 8 hours' pay, or 16 hours' pay for holidays not worked.

Claim is not supported by rule and should be declined.

All data and arguments contained herein have been presented to the Petitioner in conference and/or correspondence.

OPINION OF BOARD: The claim is that the Carrier violated Article II of the August 21, 1954 Agreement when it failed and refused to allow Terminal Division Bridge and Building Foremen eight hours pay for Washington's Birthday, February 22, 1955.

In its denial of the claim on the property the Carrier agreed that they were entitled to holiday pay under the August 21, 1954 Agreement, but denied the claim on the ground that they had already received it, as shown by payrolls for two of them. But the Employes contend that such pay merely complied with Special Rule 1 on pages 42 and 43 of the basic Agreement relating to Claimants. It provides as follows:

"Work Week Guarantee

"There will be no deduction in the compensation of Bridge and Building Foremen on account of crews working less than eight (8) hours per day for five (5) days per week."

The parties agree that Special Rule 1 is not a Holiday Rule, but merely a Work Week Guarantee Rule, as indicated by its title. It guarantees that if for any reason their crews work less than eight hours per day or five days per week the foremen shall nevertheless receive pay on that basis. In other words, if during any week, because of a holiday, weather conditions, or any other circumstances, their crews do not work the full 40 hours, the foremen are guaranteed payment as if they did.

The contention is that since the August 21, 1954 Agreement provided for holiday pay without excepting the Foremen, who under Special Rule 1 were already receiving pay for certain days not worked, including holidays during their regular assignments, they were entitled to holiday pay twice—once under each Agreement, and that therefore the 1954 Agreement was violated.

A guarantee is somewhat different from the ordinary holiday pay provision, although from the employe's point of view the result is the same. But even if the holiday phase of Special Rule 1 is regarded as equivalent to

a holiday pay rule, which it is in final effect, the 1954 Agreement does not authorize duplicate holiday pay. The situation is simply this: by Special Rule 1 the Carrier guaranteed the Claimants, or in effect agreed to pay them, holiday pay; by the 1954 Agreement Carrier agreed to give all employees holiday pay. Thus there are now two separate Rules providing that these Claimants are entitled to receive holiday pay; but both rules are obeyed when Claimants receive holiday pay once; neither rule provides for duplicate holiday pay and all the rules must be considered together.

A general rule extending to all a benefit already given a few does not ordinarily need qualification or exception. Certainly there is nothing in the 1954 Agreement suggesting an intention to grant a second holiday payment for a holiday not worked to employees already entitled to holiday pay under an earlier rule.

The basic Agreement and all supplemental Agreements are to be construed together, and it seems clear that in paying each of Claimants one day's holiday pay the Carrier was complying with the Holiday Rule and the Work Week Guarantee Rule. Consequently there has been no violation of the August 21, 1954 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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.