# Award No. 9617
# Docket No. CL-9011

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Oliver Crowther, Referee**

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## PARTIES TO DISPUTE:

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

## TENNESSEE CENTRAL RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement:

(1) When on September 6, 1954, the Carrier annulled the position of yard clerk held by R. E. Wright, at Shops, Nashville, Tennessee, and required the duties of that position to be performed by the Operator-Clerk and Yardmaster for the Holiday, (Labor Day).

(2) That Mr. R. E. Wright be compensated at the time and one-half rate for Holiday Pay.

**EMPLOYES' STATEMENT OF FACTS:** There is in effect a Rules Agreement, effective September 15, 1938, covering Clerical and Station Employes, between the Carrier and the Brotherhood, which has been amended from time to time. The Agreement and its amendments are on file with the National Railroad Adjustment Board and are hereby incorporated in this Statement of Facts.

On September 6, 1954 the Yard Clerk job held by R. E. Wright was annulled for the one day (Labor Day). The duties of the position were then distributed to the Operator-Clerk and the Yardmaster. Whereupon, Mr. R. E. Wright made claim for time and one-half rate of pay, because of the usurpation of his duties on that date. The duties regularly performed by Mr. Wright on his regularly assigned position were performed on the Holiday by the Yardmaster and Operator-Clerk, persons not covered by the Clerks' Agreement.

On October 4, 1954 Mr. Wright, wrote the General Yardmaster as follows:

That Award denied claim to eight hours' pay in lieu of pay for actual time worked on a holiday, notwithstanding a guarantee rule heavily relied upon by Employes in that case, and Carrier here directs the attention of your Board to the fact that the agreement under which instant claim is progressed contains no guarantee rule. In the absence of such rule, and in the light of the applicable special and controlling rules governing work on holidays, there can be no valid claim by an employe whose services are not needed to work on a holiday.

The instant claim amounts to a demand that the employe be worked overtime when no overtime work was required, and your Board has held in Awards too numerous to mention that the overtime rate is not applicable under any circumstances for time not worked.

The reasoning of Award 7294 is equally applicable in the circumstances of the instant case. Of interest in this connection is statement in Position of Employes in the Award referred to reading, "* * * we are fully aware that the National Railroad Adjustment Board has held the Carrier may blank a position if it does not need it on any day, * * *".

Also, it is stated in Findings of Second Division Award 2070, Referee David R. Douglass:

> "There is nothing in the agreement which requires the carrier to work regularly assigned employes on holidays when their services are not needed.
>
> "The purpose of the holiday rule was to give a regularly assigned employe a holiday without a loss of take-home pay. Such was realized here."

Carrier has shown that there is no requirement or authority for the payment of the claim here made or for any additional payment, and respectfully requests that it be denied.

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All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issues.

(Exhibits not reproduced.)

**OPINION OF BOARD:** A careful review of the record reveals that Petitioners have failed to meet the burden of proof by showing that the work regularly assigned to Claimant during his regular work week was actually performed on Labor Day, September 6, 1954, by the Operator-Clerk and Yardmaster, therefore, claim 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 2nd day of November, 1960.