Award No. 10240
Docket No. MW-9348

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ERIE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow Crossing Watchman E. M. Gordon and certain other Crossing Watchmen eight hours' pay at the pro rata hourly rate of the respective positions to which each were assigned as Holiday Pay for Thanksgiving Day, 1955.

(2) Crossing Watchman E. M. Gordon and other Crossing Watchmen who were denied holiday pay for Thanksgiving Day, 1955 now be allowed eight hours' pay at the pro-rata hourly rate of the position to which each were respectively assigned.

EMPLOYES' STATEMENT OF FACTS: Messrs. E. M. Gordon, R. J. Howard, T. Quads, H. B. Sherman, C. E. Warren, H. Pickel, M. Maciver, L. Montagna, S. Martin, G. Gardner and L. Lewis are employed by the Carrier as Crossing Watchmen. Their positions were bulletined and assigned to work only on the days that schools were open and operating.

The schools were closed on Thanksgiving Day, November 24, 1955 and reopened on Monday, November 28, 1955. Claimants performed no service on November 24, 25, 26, or 27, 1955.

Claim for holiday pay for Thanksgiving Day, November 24, 1955, in behalf of E. M. Gordon and all other employes similarly affected was presented and handled on the property in the usual and customary manner; the Carrier denying the claim.

The Agreement in effect between the two parties to this dispute dated July 1, 1951, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article II, Sections 1 and 3, of the August 21, 1954 Agreement provides:

employe who had, by virtue of a guarantee, a demand right to not less than five days' work each workweek, except in weeks in which one of the holidays fall on a workday of the five-day guaranteed workweek of the individual employe with due regard for reduction in force rules.

In order for the claimant to prevail in the instant case, he must show (1) his position is one that falls within the underlying intent of Article II, and (2) that he had a guaranteed Monday to Friday workweek which gave him a demand right to work the day immediately following the holiday in question, Friday in this case, or be paid in lieu thereof, and (3) that the holiday fell on a guaranteed workday of his workweek. However, since Rule 9(e), supra, expressly states that he has no guarantee, he cannot make the required showing and as a result his claim must fail.

The Carrier submits that the claim herein must be decided upon the plain language of Sections 1 and 3 of Article II of the August 21, 1954 Agreement in the light of the facts and circumstances surrounding it when considered in conjunction with the underlying intent of the Article itself. All of which should be further considered in the light of the fact that this is not a case of what the situation should be, but rather what the situation actually is. The Board is powerless to do or grant equity. In explaining this fact, the Board had the following to say in Award 6907:

> "What may seem like a harsh application of the agreed-on rules can be explained by saying that this Board has no power to relieve either party of what the rule exacts, of each, by way of duty to comply. There are and always will be instances where one party or the other finds the bargain it has made to be a burdensome one, and sometimes even oppressive and onerous, but we are powerless to do equity as between them."

The Carrier has shown that under the facts here involved, the terms of Article II are not only not applicable to the claimant in the first place, but even if they were he failed to comply therewith; the reason for non-compliance being wholly immaterial. Accordingly, he is not entitled to the compensation which he claims.

Therefore, the Carrier submits that since the claim is not supported by the agreements, it should be denied.

All data contained herein have been presented to or are known to the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: In this dispute between the parties herein there seems to be at least two questions.

1. Was there a violation of the Agreement dated August 21, 1954, and more especially Article V of that Agreement, when the Carrier failed and refused to allow Crossing Watchman E. M. Gordon and others eight hours' pay at the pro rata hourly rate of the respective positions to which they were assigned as Holiday Pay for Thanksgiving Day, 1955?

2. Is the Petitioner's claim limited to E. M. Gordon or can the other Crossing Watchmen be readily identified?

Let us first consider the Question No. 1. We find that both parties are in agreement that the Crossing Watchman at Church Street in Canaserga, New York, is a position that is assigned to work only on days school is open and operating—See Record Pages 3 and 8.

The school was closed on Thanksgiving Day, November 24, 1955, and reopened on Monday, November 28, 1955. There was no work done on November 24, 25, 26 or 27. See Record Pages 3 and 8.

We must of necessity refer to the Rules Agreement dated July 1, 1951, as well as the National Agreement of August 21, 1954.

We must keep in mind at all times that a party is not permitted to go beyond his written Agreement. It must be presumed that all questions of importance were considered, and incorporated in or left out of the Agreement in question. The meaning of a written Agreement must be obtained from the language used in the Agreement. See Award 6856. The requirements, as set forth in Article V (the article in controversy), are mandatory.

It seems to be agreed by both parties that Crossing Watchman Gordon was an hourly rated Employe (See Record Pages 4, 5 and 12.)

It is further agreed that the only days to be considered are the days when school is open and operating. See Record Pages 3, 6 and 42.

Certainly the Claimant did not operate under a weekly guarantee rule and schedule of a guaranteed weekly hour and wage agreement. He could only have the take-home pay as specified in the Agreement, which is clear an unambigious. This Board is required to apply the rules as written and it cannot reform an Agreement. See Awards 9314 and 9198.

The record itself is crystal clear that there was no violation of the Agreement. The statements therein contained make it clear that the Carrier acted in a correct manner in passing on this claim. We can see no reason to pass on the second question since the decision on the first question makes the other matters moot.

The very nature and the manner in which these Employes worked, the hours assigned entirely on a basis of when school was open, and the clear and concise language in the Record, shows these men did not come under the provisions of the Agreement. To hold otherwise would be unfair and unjust and would be to breathe life into a state of facts not in existence. The claim must 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 12th day of December 1961.