

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Carl R. Schedler, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD  
COMPANY**

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

1. The Carrier violated the purpose and intent of the Clerks' Rules Agreement when it discriminated against its employees in the application of a past practice whereby a certain group of employees were excused in the afternoon of the day preceding Christmas and New Years.

2. The Carrier shall now be required to compensate each of the following employees for an additional one-half day's pay for December 24 and 31, 1956 in lieu of time off which was not allowed:

John F. Czech, Jr.	N. D. Bakken
F. Braun	D. Koeske
Wm. Scale	J. Turenske
F. M. Carrico	K. Matous

3. The Carrier shall now be required to compensate each of the following employees for an additional one-half day's pay for December 24, 1956 in lieu of time off which was not allowed:

Wm. J. Fuss	J. Zennie
E. Tarnow	S Powalisz
E. Murawski	

**EMPLOYEES' STATEMENT OF FACTS:** For many years it has been the practice at the Milwaukee Shops, Milwaukee, Wisconsin, to excuse the clerical employees in the Store Department on the afternoon of the day before Christmas and the day before New Years without any reduction in pay. In

of rules of the Agreement is followed in Awards cited, however, with some exceptions, notably Award 5082, which goes outside of the principle of rules construction enunciated and apparently bases the finding in part on a verbal or parol understanding and through long practice has assumed the stature of being considered a supplemental agreement. However, if it is assumed that such a situation does exist it could not survive the revision of the Agreement unless it was incorporated therein. This Agreement has a holiday rule and there have been revisions of the same subsequent to the installation of the practice under consideration. Therefore, in order that such practice become binding on Carrier, or be construed to have assumed contract status, it would have to be reduced to writing in the subsequent revisions of the agreement. As this was not done we would consider in giving favorable status to this claim that we would be writing a rule for the parties, and as stated, this is not within our power, hence the claims fail for the reasons stated."

We respectfully ask that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimants herein do not contend that there is any understanding or Agreement between the parties or that there is any provision in the rules requiring the Carrier to excuse the Employees involved from work on the afternoon of the day before Christmas or day before New Year, but the Claimants do contend that there is a long continued practice of excusing the Employees from work at noon the day before these holidays and to pay them for eight hours on those days. It is contended that the Carrier may not unilaterally discontinue that long established practice.

This record discloses that there has been no such long established practice for the Employees involved herein. For instance, it is undisputed that no Employees were granted the privilege of being excused for a portion of a day before Christmas and New Years in 1949, 1950, 1951, 1954 and 1955.

The record does show that General Office Employees have been rather consistently granted time off on these afternoon without loss of pay. On the other hand, the Claimants involved herein have not been consistently granted this privilege. Since the Agreement does not require the Carrier to release these Claimants on said afternoons and since there is no consistent practice or custom in this regard relating to these Claimants it must be held that the claim is without merit.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 there was no violation of contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February 1962.