

Award No. 10594

Docket No. TE-9533

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad, that:

1. Carrier violated Article 37 of the Telegraphers' Agreement when on the 30th day of May, 1956, Memorial Day, one of the seven national holidays, caused and ordered the seven day positions of Ticket Agent, Lynn, Massachusetts and Assistant Ticket Agent, Salem, Massachusetts, to be blanked on this date.

2. Carrier shall compensate the equivalent of eight hours at time and one-half rate due F. A. Boyson, Ticket Agent, Lynn, in the amount \$26.50 and R. B. Ellis, Assistant Ticket Agent, Salem, in the amount \$24.34 in accordance with the Holiday Rule.

EMPLOYES' STATEMENT OF FACTS: The claim in this dispute arose when the Carrier failed to assign Ticket Agent F. A. Boyson, Lynn, Massachusetts and R. B. Ellis, Assistant Ticket Agent, Salem, Massachusetts, to perform work on May 30, 1956, which was Memorial Day, one of the seven national holidays covered by the agreement between the parties. Both the position of Ticket Agent, Lynn, and Assistant Ticket Agent, Salem, were seven day positions and the rest days were covered by either regular assigned relief men or extra men from the spare board. In each case the Carrier paid the Claimants eight hours at pro rata rate of pay. Claim was made for eight hours at time and one-half for both F. A. Boyson and R. B. Ellis and the claim was appealed to the highest officer designated to handle grievances who declined same.

POSITION OF EMPLOYES: While all the rules of the Agreement support the position of the Employees, the following Articles are called to your particular attention and cited for your convenience:

"Article 10(d). Seven-day Positions

On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

Further in support of the Carrier's position that the guarantee runs to the employee and not the position, the note under Article 10 (Forty-Hour Week Rule), reads:

"Note: The expressions 'positions' and 'work' used in this Article, refer to service, duties, or operations necessary to perform the specific number of days per week **and not to the work week of the individual employee.**" (Emphasis ours.)

In addition, in support of the Carrier's position, Third Division Award No. 7134, Opinion of the Board, reads in part:

"Carrier asserts that this rule specifically provides that a work week may be reduced by the number of holidays in the work week while the Organization contends that holiday may be blanked if the work is not to be performed by anyone. The Carrier relies primarily on Awards Nos. 5668, 6385, 6586 of this Division. These Awards hold that the Carrier may suspend work on holidays falling within a work week without violating the Guarantee Rule. **We are in accord with these holdings. . . .**" (Emphasis ours.)

Third Division Award No. 7136 — Opinion of the Board, wherein Second Division Award No. 1606 is cited in part, reading:

"To us their agreement means in respect to working employees on holidays, the Carrier has two alternatives: it may work them or it may not. If it chooses the former alternative, it incurs a penalty in the form of paying time and one-half rate for the holiday hours worked."

The above most certainly means that if the Carrier elects to not work the employee, there is no obligation to pay the man anything other than what he might be entitled to as holiday pay under the August 21, 1954 Agreement.

In Third Division Award No. 7137 Referee Edward F. Carter stated:

"The Carrier blanked claimant's position on the holiday as it had a right to do. Award 7136. It was under no obligation to use the claimant as long as the regular employees entitled to perform the remaining work were able to absorb it. If it was necessary to have assistance in the performance of this work, the regular employee is entitled to it under the holdings of this Board. Award No. 7134. No work was performed which was exclusive work of this claimant. No additional employee was used to perform exclusive work of claimant's position. This claim is not valid." (Emphasis ours.)

In view of the foregoing, the Carrier respectfully requests that your Honorable Board deny this claim in its entirety.

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

OPINION OF BOARD: Following are the agreed to facts: Claimants Boyson and Ellis are regular assigned occupants of seven day positions at

Lynn and Salem, Massachusetts, respectively. Memorial Day, May 30, 1956, was a recognized holiday under the provisions of Article 37; this day was also a work day of the workweek of each Claimant; Carrier notified each not to report for work on Memorial Day, May 30, 1956. Carrier paid to each Claimant an amount equivalent to 8 hours at pro rata rate, for this date, under the provisions of Article II, August 21, 1954 Agreement.

It is the contention of the Claimants that they, being occupants of seven day positions, are entitled to time and a half payment for the holiday in addition to the payment for 8 hours at the pro rata rate — that the provisions of Article 37 of the applicable Agreement are controlling.

The Carrier's position, briefly, is that the Claimants admit their holidays were blanked on the holiday in question and that the duties of the party in dispute were not performed by anyone else. Consequently the Carrier urges that Article 37 does not require the working of these positions on a holiday and Claimants have been allowed the one day's pro rata pay provided for under Article II of the August 21, 1954 and Article 4 of the Agreement effective August 1, 1950, the applicable Agreement.

That the Carrier has a right to blank positions on a holiday without being in violation of Article 9 — (the Suspension Rule) has been recognized in previous awards of this Board.

It has also been uniformly held that the guarantee under Article 4 of the Agreement and similar Agreements runs to the employe and not to the position. Article 4 of the Agreement effective August 1, 1950, which is the Guarantee Rule does not guarantee that employes will work on holidays. It is only when an employe works on a holiday that he receives time and a half pay and this under the terms of Article 37 (1). The Carrier by the Agreement has simply agreed to pay the incumbents of 10 (d) positions (seven day positions) for the holiday on a pro rata basis if not used and time and one half pay for the holiday if they are used.

In support of the claim it has been urged that this Board accept Award 8859 (Bakke) as a precedent; however the principles involved herein are fully discussed in Award 8539 (Coburn) and fully support the conclusion we have arrived at. See also Award 9577 (Johnson) and Award 10166 (Gray).

For the foregoing reasons we find that the Agreement has not been violated as contended for by the Claimants.

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 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 4th day of May 1962.