Award No. 11253

Docket No. TE-9893

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the Committee of The Order of Railroad Telegraphers on the Jacksonville Terminal, that:

1. Carrier violated the agreement between the parties when, on September 3, 1956 (Labor Day), it blanked the first trick and second trick leverman positions at Lee Street Tower and required the Assistant Train Directors to perform the work of the blanked positions.

2. Carrier shall compensate J. S. Weinberg, regularly assigned incumbent of the first trick Leverman position, and C. A. Sears, regularly assigned incumbent of the second trick Leverman position, each for eight hours at the time and one-half rate on September 3, 1956.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The Jacksonville Terminal Company is a terminal railroad operating a passenger station and other passenger terminal facilities at Jacksonville, Florida, which are used by the Atlantic Coast Line Railroad, Florida East Coast Railway Seaboard Air Line Railroad and the Southern Railway System.

One of the interlocking plants is known as Lee Street Tower. At the time cause for this claim arose there were five 7-day positions at this location under the Telegraphers' Agreement:

First trick Assistant Train Director	6:00 A.M. to 2:00 P.M.
Second trick Assistant Train Director	2:00 P.M. to 10:00 P.M.
Third trick Assistant Train Director	10:00 P.M. to 6:00 A.M.
First trick Leverman	6:00 A.M. to 2:00 P.M.
Second trick Leverman	4:00 P.M. to 12 Midnight

On September 3, 1956 (Labor Day), named as a holiday in the Agreement, the Carrier notified the claimants that their positions would not be filled on

It is thus abundantly clear that claimants were fully compensated according to requirements of all rules involved or applicable to the instant situation, and that they have no claim whatsoever for any additional pay under such rules.

It is clear, moreover, that claimants did not lose any pay by reason of not being required to work Labor Day, 1956. Their regular, customary, normal pay was five days' pay per week, all at straight time. Such was the pay which employe representatives recognized and even alleged was normal pay, and was all the pay which employe representatives sought to have preserved for weeks during which holidays occurred when they requested and advocated the holiday pay rule which became Article II of the August 21, 1954 agreement.

Accordingly it is clear that not only was there no agreement violation in blanking claimants' positions on Labor Day 1956, but claimants have been fully compensated according to all requirements of applicable agreements and rules and nothing more is due claimants above and beyond what they have already been paid.

It follows that the instant claim must be denied in its entirety.

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All matters herein have been handled in correspondence or discussed in conference with the employes' committee.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic issues arising from this Claim may now be considered as settled by virtue of Awards 11079, 10594, 10166, 9577, 9217, and 8539 (among others), which for the most part are not materially distinguishable in regard to the principles involved. There is some precedential authority to the contrary, but the preponderant weight of authority requires a denial decision.

It seems clear that the purpose of Article II — Holidays of the 1954 National Agreement was to insure a regular assigned employe his normal take home pay when a holiday fell on a day of his regular work week and Carrier's operations did not necessitate his working that date.

Article II — Holidays resulted from the findings of Emergency Board 106, and, consequently, the work and recommendations of that board are of especial significance.

A study of the Report of Emergency Board 106 convinces us that that Board felt it desirable to promote (not discourage) the observance of holidays by employes. It recommended that a method be worked out whereby employes could enjoy designated holidays without a loss of pro rata pay when the Carriers could manage to carry on their operations without them. As to those employes whose services could not be dispensed with on such holidays, they were to be allowed premium rate of pay.

In determining the merits of this Claim, we are required to consider Article 9 of the Agreement of the Parties, which reads as follows:

> "Regularly assigned employes will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied

> or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location.
>
> This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the company."

in conjunction with Article II of the National Agreement (to which these parties are signatory); for the National Agreement must govern in those situations where it is applicable to the subject matter under consideration. In this case, we believe that its provisions have a direct bearing on the specific issue herein involved, viz., the rate of pay for holidays not worked.

We conclude that the Carrier complied with the provisions of said Article II in regard to the proper payment of employes not worked on holidays; and we further conclude that the Carrier in so doing was also in compliance with said Article 9, for these Claimants were paid for a basic day at the pro rata rate; and Article 9 does not guarantee or direct that an employe be worked a prescribed number of hours. It protects him from a wage loss if required on duty less than the minimum number of hours as per location, provided he is ready for service and not used.

Neither the Agreement of the Parties nor Article II of the National Agreement diminishes the prerogative of the Carrier to determine whether it is necessary to work an employe on a holiday.

The Record reveals that for approximately 75% of the employes involved the National Agreement of 1954 meant (for the first time) a holiday with pay but that some 25% of the other employes concerned received no new benefit in this regard; however, it does not follow that due to this circumstance something must evolve in the process of contractual construction that will result in the employes in the 25% group receiving in some fashion a corresponding enhancement of benefits. As this Board aptly pointed out in Award 9577, which we quote with approval in pertinent part as follows:

> "A general rule extending to all a benefit already given a few does not ordinarily need qualification or exception."

We are aware of the possibility that some employes would prefer to work at the premium rate of pay on holidays in lieu of having holidays and being paid at the pro rata rate for a basic day; however, an impartial study of the Report of Emergency Board 106 leads us to the conclusion that the goal of the Employes in 1954 was to secure the right to have and enjoy holidays without the loss of normal pay. If we held (and the Agreements before us provide no basis for so doing) that 2½ days of pro rata pay should be paid employes who did not work on a holiday that fell on one of the work days of the regular assignment, then we might be resurrecting the old problem of railroad employes not being in a position to enjoy their vacations on the same basis as most other citizens. Such a result would be contra to the letter and spirit of the 1954 Agreement.

In order to prevent possible misconstruction of this Award, we point out some of the distinguishing characteristics of this Claim:

1. It does not involve the taking away of work belonging to agreement covered employes.

2. Craft lines were not crossed.

3. These Claimants were not worked on the holiday in question, and we are not required to dispose of the issue of computing pay in a situation where an employe was actually worked on such an occasion.

It was contended on behalf of the Employes in panel argumentation before the referee that that part of the Claim pertaining to the second trick position was independently sustainable by virtue of a letter of understanding executed on the property August 23, 1956. The point raised in this regard is adroitly presented and almost persuasive; however, we shall not delve into this facet of the case. In the handling on the property the Employes did not advance this argument; they did not suggest that there was any distinction between the claims of Mr. Weinberg and Mr. Sears. In any event, we would be inclined to consider this letter in the context of the Agreement of the Parties and the 1954 National Agreement. We do not believe the parties intended to create a status for the second trick position which would result in the employe filling it having different rights and privileges than those conferred upon the other agreement covered employes.

Therefore, the Claim must be denied in its entirety.

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 28th day of March 1963.