

Award No. 11317

Docket No. TE-10139

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway, that:

1. The Carrier violated the Agreement between the parties when it failed and refused to pay Mr. B. W. Poe eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the holidays, Christmas, December 25, 1956, and New Year's Day, January 1, 1957; and that

2. The Carrier shall now be required to make such payments to Mr. Poe.

EMPLOYEES' STATEMENT OF FACTS: Claimant B. W. Poe is the regularly assigned incumbent of the agent-operator's position at Brickhaven, North Carolina. Both the employe and position are subject to the Telegraphers' Agreement. The Claim involves the application of Article II of an agreement between the parties dated February 9, 1955, which adopted provisions of national agreement of August 21, 1954. The Article provides for paid holidays, and reads as follows:

"ARTICLE II

Holidays

"SECTION 1.

Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro-rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a work day of the work week of the individual employe:

New Years' Day

Labor Day

Washington's Birthday

Thanksgiving Day

This submission is being made in accordance with provisions of motion of the Third Division dated November 26, 1957, effective January 1, 1958, and carrier reserves to itself all the rights accorded it under provisions of said motion.

OPINION OF BOARD: Claimant B. W. Poe was the regularly assigned agent-operator at Brickhaven, North Carolina. He worked the day preceding Christmas and New Years in his regularly assigned position. He was off on the two holidays. He worked December 26 and January 2 as a Train Dispatcher. The Carrier declined holiday pay on the basis that Claimant did not qualify. Carrier contends that Section 3 of Article II contemplates workdays and compensation on employe under the coverage of an Agreement with an Organization which was a party to the Holiday Agreement. The Carrier holds that since Claimants service on both days succeeding the holidays was under the Train Dispatchers Agreement (who were not parties to the holiday agreement) that Claimant did not qualify for holiday pay.

We concur with the opinion expressed in Award No. 82 of Special Board of Adjustment No. 192, wherein it was held:

"We think it is clear from the above quoted language that the framers of the Agreement recognized that it is not unusual for regularly assigned employes under non-operating agreements to hold dual seniority. We can read no intent in that language to disqualify a regularly assigned employe under the Clerks' Agreement for holiday pay because he may have worked under some other agreement either on the day before or on the day after or on the holiday. As a matter of fact the language of the Agreement appears to have been carefully drawn so as to preclude such a result."

For that reason, we find the Agreement was violated.

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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1963.