

Award No. 12392
Docket No. MW-11449

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WESTERN MARYLAND RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it instructed and required Crossing Watchmen W. R. Somerville, L. L. Gise, L. Jackson and C. F. Handschuh to suspend work during and throughout their regularly assigned work periods on May 30, 1958 and July 4, 1958 for the purpose of absorbing overtime.

(2) Each of the claimants referred to in Part (1) of this claim be allowed sixteen hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Under date of July 1, 1957, the Carrier issued Bulletin No. 210-G, establishing four positions of crossing watchmen as follows:

"WESTERN MARYLAND RAILWAY COMPANY G-37
ADVERTISEMENT — New or Vacant Positions

Hagertown, Md.
July 1, 1957

DEPARTMENT — Engineering

BULLETIN No. 210-G

TO EMPLOYES CONCERNED:

Applications will be received in this office up to 8:00 A. M., Thursday, July 11, 1957, for the following positions:

In Award 8539 claims were filed by employees occupying 7-day positions for a day's pay at time and one-half rate in addition to the day's pay for the holiday not worked. In deciding that case Referee William F. Coburn made the following observations:

"2. Article II of the 1954 Agreement was designed primarily to insure maintenance of weekly take home pay for those regularly-assigned hourly rated employees who prior to that time had lost a day's pay when the holiday fell on a work day of his work week.

3. Seven-day positions under the Guarantee Rule of the basic agreement here were paid for holidays whether worked or not.

4. There is nothing in the basic agreement or in the 1954 National Agreement that would prohibit the Carrier from blanking these positions on holidays provided payment for eight hours at the pro rata rate is made.

Furthermore, Article 23 of the basic agreement provides the only requirement for payment of the time and one-half rate when a 7-day employee actually works on a holiday. To attempt to read this requirement into Article 24 of the same contract is manifestly unsound under any principle of contract construction."

To support its claim the Brotherhood relies on Rules 22 (b) and 26, neither of which are germane to the issue in this case, since the Company has neither changed the regularly assigned hours of the claimants' positions, nor have the claimants been required to suspend work on a work day for the purpose of absorbing overtime payments. As is the normal procedure with non-operating employees, the claimants were not required to work on the holidays since their services were not needed and they were paid 8 hours at the pro rata rate therefor in accordance with Article II of the August 21, 1954 National Agreement. The contention that the Carrier may not reduce the work week below 5 days in a week in which a holiday occurs is directly adverse to express language of Rule 19 (a) wherein it is stated that " * * * except that this number of days may be reduced in a week in which holidays occur by the number of such holidays."

(Exhibits not reproduced.)

OPINION OF BOARD: When Carrier bulletined crossing watchman positions as five day jobs was it a violation of the agreement to instruct the Claimant crossing watchman not to report on Decoration Day and the Fourth of July, both of which fell during the five day workweek and both of which are agreement-designated holidays, when the effect of such instruction is to have employees physically work less than five days although they receive straight time pay for five days?

We hold no.

The yard engine which moved over the crossing here involved was annulled on the days in question, consequently there was no need to protect the crossings. Carrier instructed the Claimant crossing watchman here involved not to report and paid them straight time. If they had worked they would have been entitled to an additional time and one-half for eight hours.

The Organization claimed that Carrier's action breached the Agreement in that regularly assigned hours were changed to avoid application of overtime rules (Rule 22) and employees were required to suspend work during an assigned work period for the purpose of absorbing overtime. (Rule 26.)

With this position we cannot agree.

The employees' regular hours were not changed since they were paid for eight hours on each day. Since they hadn't worked overtime on any other day, they were not suspending to absorb overtime further.

The language of Rule 19 (a) specifically permits a reduction in the days worked in any work week in which holidays occur.

A holiday with a workweek creates an exception to the five day workweek Rule (19½ (a) and (b)). This result is consistent with the intent expressed in the Report to the President by Emergency Board 106, i.e., to maintain normal take home pay in a week with a holiday in it and to give a take home pay in excess of normal for those employees who work on holidays.

The Bulletin for the crossing position must be read in this frame of reference. If departure from this practice is to be attributed to Carrier, it must be unequivocal, and not arrived at by inferential reading of the language of the bulletin.

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 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 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 1st day of April 1964.