

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CENTRAL OF GEORGIA RAILWAY COMPANY

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

CLAIM NO. 1

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions, April 26, 1960 (Southern Memorial Day—holiday) and July 4, 1960, (Independence Day—holiday).

2. The Carrier shall pay the following claimants a day's pay (8 hours) at the time and one-half rate for April 26, 1960, (the holiday) in addition to the day's pay (8 hours), at the pro rata rate paid them:

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| 1. R. Ashley, Senoia, Georgia | 7. C. J. Logan, Lindale, Ga. |
| 2. W. C. Hunt, Newman, Georgia | 8. D. Earnest, Rome, Ga. |
| 3. R. A. Stanley, Sargent, Georgia | 9. H. A. Abrams, Lyerly, Ga. |
| 4. J. B. Wilkes, Carrollton, Ga. | 10. W. H. Duke, Summerville, Ga. |
| 5. H. E. Love, Bowden Jct., Ga. | 11. D. A. Strickland, Trion, Ga. |
| 6. E. H. Murphy, Bremen, Ga. | 12. W. D. Aiken, LaFayette, Ga. |

3. The Carrier shall also pay the following claimants a day's pay (8 hours) at the time and one-half rate for July 4, 1960 (the holiday) in addition to the day's pay (8 hours) at the pro rata rate paid them:

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| 1. R. Ashley, Senoia, Georgia | 9. T. E. Couey, Krannert, Georgia |
| 2. W. C. Hunt, Newman, Georgia | 10. H. A. Abrams, Lyerly, Georgia |
| 3. R. A. Stanley, Sargent, Georgia | 11. W. H. Duke, Summerville, Georgia |
| 4. N. L. Thomas, Yates, Georgia | 12. L. H. Pittman, Chickamauga, Ga. |
| 5. E. H. Murphy, Bremen, Georgia | 13. W. D. Aiken, LaFayette, Ga. |
| 6. H. E. Love, Bowden Jct., Georgia | 14. D. A. Strickland, Trion, Ga. |
| 7. C. J. Logan, Lindale, Georgia | 15. J. C. Strickland, Rossville, Ga. |
| 8. D. Earnest, Rome, Georgia | |

CLAIM NO. 2

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate H. L. Marsh, Agent-

Operator, Statesboro, Georgia, April 26, 1960 (Southern Memorial Day—holiday).

2. The Carrier shall because of the violation set out in part 1 hereof, compensate H. L. March, Agent-Operator, Statesboro, Georgia, for 8 hours at the time and one-half rate.

CLAIM NO. 3

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions on April 26, 1960, a holiday.

2. Claimants, hereinafter set forth, shall be paid 8 hours at time and one-half for holiday in addition to 8 hours at pro rata rate already paid.

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| 1. W. H. Blanton, Midville, Ga. | 6. C. L. Youmans, Waynesboro, Ga. |
| 2. F. C. Glover, Wadley, Ga. | 7. J. H. Harrell, Jr., Metter, Ga. |
| 3. P. L. Canady, Bartow-Davisboro, Ga. | 8. Fred Trapnell, Milledgeville, Ga. |
| 4. R. L. Carter, Oconee, Ga. | 9. Bobby Hall, Jr., Eatonton, Ga. |
| 5. J. C. Beville, Toombsboro, Ga. | 10. J. T. Floyd, Covington, Ga. |
| | 11. E. M. Wood, Porterdales, Ga. |

CLAIM NO. 4

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth for July 4, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to eight (8) hours pro rata already paid to them:

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| 1. R. Ashley, Senoia, Ga. | 9. T. E. Couey, Krannert, Ga. |
| 2. W. C. Hunt, Newman, Ga. | 10. H. A. Abrams, Lyerly, Ga. |
| 3. R. A. Stanley, Sargent, Ga. | 11. W. H. Duke, Summerville, Ga. |
| 4. M. L. Thomas, Yates, Ga. | 12. L. H. Pittman, Chickamauga, Ga. |
| 5. E. H. Murphy, Bremen, Ga. | 13. W. D. Aiken, LaFayette, Ga. |
| 6. H. E. Love, Bowden Jct., Ga. | 14. D. A. Strickland, Trion, Ga. |
| 7. C. J. Logan, Lindale, Ga. | 15. J. C. Strickland, Rossville, Ga. |
| 8. D. Earnest, Rome, Ga. | |

CLAIM NO. 5

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth for July 4, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours pro rata rate already paid to them:

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| 1. R. L. Murdock, Byron, Ga. | 8. J. L. Brown, Clayton, Ala. |
| 2. L. G. Down, Montezuma, Ga. | 9. R. A. Rogers, Ozark, Ala. |
| 3. J. I. English, Oglethorpe, Ga. | 10. J. R. Stansell, Arlington, Ga. |
| 4. W. B. Hatfield, Amdersonville, Ga. | 11. G. H. Dunaway, Blakely, Ga. |
| 5. H. B. Mulican, Shellman, Ga. | 12. J. W. Patterson, |
| 6. F. P. Love, Cuthbert, Ga. | Reynolds-Butler, Ga. |
| 7. Susie B. Wilson, Ft. Gaines, Ga. | |

CLAIM NO. 6

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate vacation relief Agent-Operator H. K. Wood, regularly assigned to vacation relief position No. 1, while relieving the regularly assigned agent for July 4, 1960, a holiday.

2. Carrier shall be required to compensate H. K. Wood for five (5) additional hours at the time and one-half rate of pay applicable to the agent-operator's position at Dawson, Georgia.

CLAIM NO. 7

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth, for July 4, 1960, a holiday.

2. Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours pro rata rate already paid to them:

1. W. G. McClung, Army Depot, Ga. 2. J. H. Duke, Hapeville, Ga.

CLAIM NO. 8

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth, for July 4, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours pro rata rate already paid to them:

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| 1. M. D. King, Gray, Ga. | 4. R. D. McBride, Madison, Ga. |
| 2. C. J. Griggs, Monticello, Ga. | 5. J. S. Hays, Watkinsville, Ga. |
| 3. A. Q. Wyatt, Machen, Ga. | 6. C. F. Scheider, Athens, Ga. |

CLAIM NO. 9

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth, for July 4, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours pro rata already paid to them:

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| 1. R. W. Fain, Forsyth, Ga. | 4. J. C. Fain, Barnesville, Ga. |
| 2. C. H. Thompson, Thomaston, Ga. | 5. P. P. Addington, Hampton, Ga. |
| 3. C. M. Hand, Jonesboro, Ga. | |

CLAIM NO. 10

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth, for September 5, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours at the pro rata rate already paid to them:

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| 1. Mrs. Grace Day, Gray, Ga. | 4. R. D. McBride, Madison, Ga. |
| 2. C. J. Griggs, Monticello, Ga. | 5. J. S. Hays, Watkinsville, Ga. |
| 3. A. Q. Wyatt, Machen, Ga. | 6. C. F. Scheider, Athens, Ga. |

CLAIM NO. 11

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and/or refused to properly compensate the occupants of regularly assigned positions as hereinafter set forth, for September 5, 1960, a holiday.

2. The Carrier shall pay the following claimants eight (8) hours at the time and one-half rate for the holiday in addition to the eight (8) hours pro rata already paid to them:

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|-----------------------------------|----------------------------------|
| 1. R. W. Fain, Forsyth, Ga. | 4. P. P. Addington, Hampton, Ga. |
| 2. J. C. Fain, Barnesville, Ga. | 5. C. M. Hand, Jonesboro, Ga. |
| 3. C. H. Thompson, Thomaston, Ga. | |

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 31, 1959, and as otherwise amended.

At Page 45 through to the middle of Page 50 of said Agreement are listed the positions, the regular occupants of which are the claimants involved in these disputes.

On April 19, 1960, Superintendent E. D. Glenn issued the following circular (No. 60-75) addressed to all Agents under his jurisdiction:

"CENTRAL OF GEORGIA RAILWAY COMPANY
Office of Superintendent
Macon Division

"MACON—April 19, 1960—JSB:kw
"File 118

"CIRCULAR NO. 60-75

"ALL AGENTS:

"Account Tuesday, April 26, 1960, Southern Memorial Day, being a holiday the following agencies will be closed:

Jonesboro	Leary	Clayton
Hampton	Blakely	Ozark
Barnesville	Arlington	Reynolds
Forsyth	Columbia	Butler
Byron	Shellman	Howard
Montezuma	Cuthbert	
Andersonville	Fort Gaines	

applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491."

The Board having heretofore recognized the limitations placed upon it by law, and that it does not have authority to grant new rules, and will therefore not attempt to further restrict Carrier's rights, there is ample reason for a denial award. This is purely an **all-to-gain-and-nothing-to-lose** proposition by the Employes.

CONCLUSION

The Carrier has proven to your Honorable Board that this claim should be declined for the following reasons:

1. Rule 4 (f) does not state, nor was it ever intended, to require the Carrier to work all employes on all holidays. Or, if the Carrier does not require them to work on all holidays, to pay them 8 hours at time and one-half rate of pay for doing absolutely nothing. Rule 7, Part 1—**Holiday Work**, is the rule setting up penalty pay when the Carrier requires these employes to work on holidays.

Rule 5 (d) of the Overtime Rule is not in point because no overtime was absorbed. How could it be . . . there was no work to be performed on the holidays. This old "absorption of overtime" rule has been in effect for more than 40 years, and has never been interpreted as the Employes are now contending.

Rule 18 (f) is likewise ancient with age, and it has never been construed as the Employes are now urging. That rule does not apply to a situation such as is here involved, and the truth of the matter is that whenever a position has been re-established where one formerly existed, the rate of pay and hours of service have always been renegotiated. Rule 18 (f) has no bearing on this dispute.

2. In fact, no rule, interpretation or practice has been violated. This claim is in reality a demand for your Honorable Board to write the Employes a new rule. The Board knows that it lacks authority to negotiate for the parties, and it has consistently so held.

3. This claim is not supported by the Agreement here in evidence, and a denial award is clearly proper.

(Exhibits not reproduced).

OPINION OF BOARD: Petitioner has presented eleven (11) practically identical claims for a number of designated employes wherein Petitioner has contended that the Carrier violated the terms of the effective Agreement between the parties when it failed or refused to permit these employes to work on holidays occurring during their regular work week on their regularly assigned positions in compliance with the guaranty rule, Rule 4 (f), of the Agreement; that they were deprived of the right to work as guaranteed them and by reason of Carrier's conduct in this regard they should be compensated for eight (8) hours time at time and one-half pay for each of these holidays in accordance with Rule 7 of the Agreement.

It is Carrier's position that Carrier had the right to blank these positions on all of the holidays named in the claims and that all of the employees involved were paid 8 hours pro rata pay for these holidays, even though they performed no work on these holidays, in compliance with the Agreement.

That the Carrier has a right to blank holidays without being in violation of the Agreement has been recognized and upheld in many previous awards of this Board.

It has been uniformly held that the guarantee, under rules very similar to Rule 4 (f) of this Agreement, runs to the employe and not to the position; Rule 4 (f) does not guarantee that employes will work on holidays. It is only when an employe works on a holiday that he is entitled to **and receives time and a half pay** and this under the terms of Rule 7—Part 1 of this Agreement.

All the Claimants herein having been fully compensated on the holidays involved in the claims for eight (8) hours at the pro rata rate, the holidays occurring during their work week, and further compensation for time not worked on these holidays, for the foregoing reasons, must be denied.

See Award No. 2325 (Second Division)—Carter; Award No. 8539—Coburn; Award 10166—Gray; Award 10594—Hall.

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 the Agreement was not violated.

AWARD

All claims denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 5th day of February 1965.