

Award No. 13277

Docket No. TE-10992

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that,

1. Carrier violated the Agreement between the parties hereto when on Monday, September 2, 1957 (Labor Day) it blanked the Agent-Telegrapher position at Clifton Springs, N.Y.

2. Carrier shall compensate William Peisher, regular occupant of the Agent-Telegrapher position at Clifton Springs, for eight hours at time and one-half the hourly rate of the Clifton Springs Agent-Telegrapher position, to cover Monday, September 2, 1957.

3. Carrier violated the Agreement between the parties hereto when on Thursday, November 28, 1957 (Thanksgiving Day) it blanked the Agent-Telegrapher position at Clifton Springs, New York, and resultantly failed to pay William Peisher for that holiday in accordance with Agreement rules.

4. Carrier shall compensate William Peisher, regular occupant of the Clifton Springs Agent-Telegrapher position for eight hours at time and one-half the hourly rate of the Clifton Springs position to cover Thursday, (Thanksgiving Day), November 28, 1957.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Lehigh Valley Railroad Company, hereafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The schedule agreement was effective February 1, 1948 and has been amended. The agreement as amended is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

The disputes submitted herein were handled separately on the property in the usual manner through the highest officer designated by the

Claimants each received one day's pay at straight time for the holiday not worked.

"There is nothing in the agreement which requires the carrier to work regularly assigned employees on holidays when their services are not needed.

"The purpose of the holiday rule was to give a regularly assigned employe a holiday without a loss of take-home pay. Such was realized here.

"Claim denied." (Emphasis ours.)

In conclusion, Carrier urges that under the current agreement it was within its rights blanking claimant's position on the two holidays involved in this dispute. He was paid for the holiday pay the existing rule provides. There was no violation of the agreement when the position was blanked on Labor Day and Thanksgiving Day in 1957, and the take-home pay of claimant was not affected in any way by blanking those holidays.

OPINION OF BOARD: Claim was made that the Carrier violated the Agreement when it blanked the Agent-Telegrapher position at Clifton Springs, New York on Monday, September 2, 1957 (Labor Day) and Thursday, November 28, 1957 (Thanksgiving Day).

The agreed to facts are:

1. William Peisher, Agent-Telegrapher, is the owner of this assignment, a seven day position.
2. His regular assigned workdays are Thursday, Friday, Saturday, Sunday, and Monday, and assigned rest days are Tuesday and Wednesday of each week.
3. He did not work Monday, September 2, 1957 or Thursday, November 28, 1957 but was paid 8 hours at the straight rate for each date.
4. He now asks to be paid an additional eight hours for each day at the time and one-half the hourly rate.

The question presented is: "Has the Claimant a demand right to work his regular assignment on September 2, 1957 (Labor Day) and November 28, 1957 (Thanksgiving Day) and thus receive penalty pay or may the Carrier blank the position and discharge its obligation to Claimant by paying him holiday pay while not working him?"

Contention is made by the Claimant that Carrier in blanking the position on the day in question violated:

"Rule 11—Guarantee—Suspension From Work

"(a) A regularly assigned employe shall receive one day's pay within each twenty-four (24) hour period, according to position occupied or to which entitled, if ready for service and not used, or if required on duty less than eight (8) hours on his position, except on his rest days when occupying positions covered by Section 1 (d) of

Rule 7, or on his rest days and holidays when occupying positions covered by Section 1, (b) and (c) of Rule 7.

"(b) Employees will not be required to suspend work during regular hours or to absorb overtime."

"Rule 7—Rest Days, Relief Assignments and Holiday Service

"Section 1. (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."

asserting that the only exception to non-payment permitted under this rule is "on his rest days only".

That the Carrier has the right to blank these holidays has been established by this Board. Confirm Awards 8539 (Coburn) and 9474 (Grady) and others.

Accordingly, Rule 11 cited is a guarantee to employees "ready for service and not used" of a full pay check not a guarantee Carrier will provide them with work.

Award 7136 (Carter) quoted Second Division Award No. 1606 as follows:

"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."

and provided:

"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."

Claimant has been paid that to which he is entitled—holiday pay at the straight time rate. Confirm Award No. 10594 (Hall) and 11253 (Miller).

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 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 10th day of February 1965.