

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE WESTERN PACIFIC RAILROAD COMPANY

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

1. Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate W. J. McCalister, second shift Wire Chief, Elko, Nevada, for time worked on the following holidays: December 25, 1961 and January 1, 1962.

2. Carrier shall now compensate W. J. McCalister for a day's pay at the time and one-half rate for each of the holidays set out in paragraph one hereof, in addition to the compensation already paid him for work performed on these days.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto effective June 1, 1940, revised January 1, 1953, and as otherwise amended.

W. J. McCalister, hereinafter referred to as claimant, was on the dates involved in this claim the regularly assigned second shift wire chief at Elko, Nevada. As such he had an assigned work week of Wednesday through Sunday, rest days Monday and Tuesday.

The respondent is the Western Pacific Railroad Company, hereinafter referred to as Carrier.

On or about May 26, 1961, Carrier notified claimant that he would be required to work the rest days of his assignment until further notice. This arrangement continued in effect through the period involved in this claim.

Monday, December 25, 1961, and Monday, January 1, 1962, respectively, were Christmas and New Year's Day, holidays within the meaning of Rule 9, Section 2, of the parties' agreement. In addition to being two (2) of the specified holidays, Monday, December 25, and Monday, January 1, were also the assigned rest days of claimant's position. Rule 9, Section 1(m), of the parties' agreement provides the rate of compensation for employees who are required

that Agreement to so award triple time, nor has it been so applied since 1949.

Thus the record is incontrovertible. The Agreement since the holiday-rest day-Sunday provisions were adopted in 1945, has not provided two days' pay nor triple time for employes working on a day which happens to be the employe's rest day and also a holiday. Neither have the parties so interpreted or applied the Agreement to provide other than the "rate" to be paid for work performed. Claimant was properly compensated at the rate of time and one-half for his eight hours' work as provided in the various overtime rules.

It is Carrier's position that the instant claim should be dismissed by your Board as the Organization has not complied with the provisions of the Railway Labor Act and the dispute is not properly before your Board.

In the event your Board assumes jurisdiction, Carrier strongly urges the claim be denied as the penalty sought is not only totally without support under the Agreement but is actually prohibited by the overtime provisions of the Agreement as well as in conflict with governing practices and interpretations under the Agreement over the years.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves for dismissal of the Claim on the ground that Petitioner failed to handle it in the usual manner on the property as required by Section 2 Second and Section 3 First (i) of the Railway Labor Act.

It is undisputed that in the usual manner of handling claims on the property the parties conferred, after denial by the chief operating officer, in a final attempt to resolve disputes without need of invoking this Board. It is uncontroverted that Carrier requested Petitioner to adhere to this procedure in the instant case. Then, the case was placed on an agenda of cases to be discussed by the parties on a specified day. The parties met at the appointed time and discussed a number of cases on the agenda; but, the General Chairman abruptly departed the conference failing and refusing to discuss the instant case.

We have held in a host of cases that this Board is without jurisdiction to entertain a petition if the petitioner has failed to confer and otherwise handle the case in the usual manner on the property. See, for example, Awards 12499, 13097, 13120, 13509, 13571, 13721, 13959 and 14054.

We find this Board is without jurisdiction to consider this case on the merits.

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for lack of jurisdiction.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1966.