Award No. 14138
Docket No. TE-14046

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Florida East Coast Railway, that:

CLAIM No. 1

1. Carrier violated the terms of an Agreement between the parties hereto when it failed and refused to properly compensate Martha L. Acosta, regular occupant of Position No. 5, Titusville, Florida, for time worked on Monday, September 3, 1962, a holiday. (Labor Day.)

2. Carrier shall now compensate Martha L. Acosta for a day's pay at the time and one-half rate for work performed on the holiday, set out in paragraph 1, in addition to the compensation already paid her for work performed on this day.

CLAIM No. 2

1. Carrier violated the terms of an Agreement between the parties hereto when it failed and refused to properly compensate J. L. Rowell, regular occupant of the third shift Little River, Florida, for time worked November 22, 1962, a holiday. (Thanksgiving.)

2. Carrier shall now compensate J. L. Rowell for a day's pay at the time and one-half rate for work performed on the holiday, set out in paragraph 1, in addition to the compensation already paid him for work performed on this day.

EMPLOYES' STATEMENT OF FACTS: There is in evidence by and between the parties to this dispute, effective August 1, 1948, and as amended. Copies of said Agreement, under law, are assumed to be on file with your Board and are, by this reference, made a part hereof.

Claims handled separately on the property, involving identical issues under the same rules, have been incorporated into this appeal. As stated in Award 11174 (Dolnick):

"The Claimants herein were seeking compensation pursuant to the terms of two specific articles, **relative to two specific employment situations.**" (Emphasis ours.)

Contrary to the Board's Opinion, however, the claimants in that dispute, as in the instant one, worked on a rest day which was also a holiday, thus performing service on only **one day** and engaging in one **employment activity** — i.e., the performance of service for eight hours. Thus, only one time and one-half payment was due and that payment having been made, nothing more is due the claimant. Certainly the Railway has not agreed to pay double or duplicate payments simply because an employe happens to perform service on a rest day falling on a holiday, the payment made pursuant to one rule satisfying the requirement for an identical payment under the other rule. See Third Division Awards 9577, 10166 and 10594, also First Division Awards 11634 and 12632. Thus, the instant claims are nothing more than attempts to collect double penalties through the application of the Rest Day and the Holiday pay rules to the same service performed, double penalties never intended or contemplated by the Agreement and completely contrary to the prior consistent holdings of the Third Division, National Railroad Adjustment Board, or as held in the Opinion of the Board in Award 5473:

". . . Our late Awards hold that to allow both penalties concurrently is to allow a double penalty, and that the greater penalty alone should be allowed. Awards 4109, 5423. Consequently, we sustain the claim for eight hours at pro rata rate for each day Claimant was not permitted to work her regular assignment, and deny the balance of the claim."

See also Third Division Awards 2695, 2859, 4151, 4710, 5423, 5548, 6021, 6750, 7370, 8004 and 8013.

In fact, during the course of conference discussion of these claims on January 11, 1963, General Chairman Hamilton of The Order of Railroad Telegraphers informed Assistant Vice President and Director of Personnel R. W. Wyckoff and other members of his staff that until he learned of Awards 10541 and 10679 he would not have considered that any basis existed for the instant claims. Obviously, therefore, the Employes are simply attempting to capitalize on two unfortunate and obviously erroneous Awards of the Third Division, National Railroad Adjustment Board, by claiming penalty payments never contemplated by the parties at the time the subject rules of the Telegraphers' Agreement were negotiated.

For the reasons stated the claims are without merit and should be denied.

OPINION OF BOARD: Individual Claims by two different employes were handled separately on the property. However, in the instant dispute both were combined, inasmuch as they allege a violation involving similar issues and encompassed by identical rules. This procedure has received our approval in Award 11174 and others.

Claimant No. 1, Martha L. Acosta, is the regular occupant of Position No. 5, with a work week Wednesday through Sunday, and rest days Monday and Tuesday. On Monday, September 3, 1962, the Carrier required said Claimant to work her assignment, for which she was compensated in accordance with Rule 15 (c) — the Rest Day provision. However, that Monday was also a holiday — Labor Day. Hence, the Organization now seeks an additional day's

pay at the time and one-half rate in accordance with Rule 15 (d) — the Holiday Work provision.

Claimant No. 2, J. L. Rowell, is the regular occupant of the clerk-operator's position, with a work week Friday through Tuesday, and rest days Wednesday and Thursday. On Thursday, November 22, 1962, the Carrier required this Claimant to work his assignment, for which he was compensated in accordance with Rule 15 (c) — the Rest Day provision. However, that Thursday was also a holiday, namely, Thanksgiving. Therefore, the Organization now seeks an additional day's pay at the time and one-half rate in accordance with Rule 15 (d) — the Holiday Work provision.

The Carrier denied both claims on the ground that the holidays were not work days in either of the Claimants' assignment and, furthermore, that the effective Agreement between the parties does not provide for two payments at the time and one-half rate for performance of one day's work.

The two aforementioned Rules pertinent herein, provide as follows:

"RULE 15 (c).

2. Employes required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

(a) 1. Employes occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work."

"RULE 15 (d). HOLIDAY WORK

1. Time worked on the following holidays: Namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday) within the hours of the regular week day assignment shall be paid for on the following bases:

(a) 1. Employes occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required holiday service is on their regular positions or on other work."

The nature of the instant Claims has been the subject of previous contention before this Board. The issue before us now is whether an employe who is required to work his assigned position on a rest day, which incidentally is also a holiday, shall be entitled to be compensated at premium rates for both the rest day and the holiday.

This question was answered in the affirmative, beginning with Award 10541, adopted April 25, 1962. Since then, Awards 10679, 11454, 11899, 12453 and 12471, have all reaffirmed the conclusion reached in Award 10541, without a single contrary Award on this particular issue.

It is noteworthy, that in Award 10541, the Carrier Members filed a well-documented dissent. They have adhered to their position in each of the above-mentioned subsequent Awards, via the medium of a dissent.

In the instant dispute, we are again requested to review our position and deny this Claim, despite the established precedents. In this respect, we are referred to a "Memorandum to Accompany Award 1680," where the respected Referee (Garrison) was confronted with a similar request. In a reasoned discourse on this subject he voiced the opinion that, "(c) All semblance of predictability and uniformity of treatment in the interpretation and application of the rules would disappear." Although we are reluctant to perpetuate a condition which **prima facie** appears to run counter to the norm, nevertheless, the effective agreement between the parties does not prohibit such payment, nor is it unconscionable.

It appears to us that in the present posture of these precedent Awards, the proper forum is the bargaining table.

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

Claims No. 1 and No. 2 are hereby sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.

CARRIER MEMBERS' DISSENT TO AWARD NO. 14138, DOCKET NO. TE-14046

The Carrier Members' Dissent to Award 10541 is adopted as dissent in this case.

P. C. Carter
R. E. Black
D. S. Dugan
T. F. Strunck
G. C. White

REPLY TO CARRIER MEMBERS' DISSENT TO AWARD 14138, DOCKET NO. TE-14046

Six times after the dissent to Award 10541 was filed this Board has decided identical disputes contrary to the opinions expressed in that dissent, and in agreement with the opinions expressed in the Reply to Dissent to Award 11454.

As so clearly pointed out in the present award, it appears that at this stage the proper forum is the bargaining table, and further bickering in the form of dissent and response is not only useless but quite unseemly in a body of the Adjustment Board's stature.

J. W. Whitehouse
Labor Member