Award No. 14743
Docket No. TE-11338

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. The Carrier violated the parties' Agreement when it failed and refused to pay Relief Employe W. G. Cross, the same compensation for work performed on Position No. 247 "BD" General Telegraph Office, San Francisco, January 1, 1958, (a holiday) that it would have paid the regular occupant of the position had he worked his assignment on this day.

2. The Carrier also violated the parties' Agreement when it failed and refused to pay Relief employe Lillian J. Meister, the same compensation for work performed on Position No. 247 "BD" General Telegraph Office, San Francisco on May 30, 1958, (a holiday) that it would have paid the regular occupant of the position had he worked his assignment on this day.

3. The Carrier shall, because of the violations set forth above, compensate W. G. Cross and Lillian J. Meister a day's pay (8 hours) at the pro rata rate of the positions worked on January 1 and May 30, 1958, as set forth in Items 1 and 2 above, in addition to that paid them for work performed on said days.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as amended.

At Page 43 of said Agreement are listed the positions in "BD" General Telegraph Office, San Francisco, California. The listing reads:

OPINION OF BOARD: Claimants Cross and Meister are extra employes assigned to the extra board. Claimant Cross performed three consecutive days of compensated relief service on December 31, 1957, January 1, 1958 and January 2, 1958, on three separate positions, in each instance relieving the regularly assigned incumbent of the position. Claimant Meister did the same on May 29, 30 and 31, 1958.

In both instance Claimants were paid straight time pay for the days preceding and following the holidays involved and time and one-half for the instant holiday.

Both claims are for eight (8) hours pay at the pro rata or straight time rate for the positions worked on the subject holiday. Claims are based on Article II, Sections 1 and 3 of the August 21, 1954 Vacation Agreement read together with Rules 4, Section (b) and 6, Section (a) of the current Agreement between the parties, as follows:

ARTICLE II — HOLIDAYS

" 'Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays.' "

" 'Section 3. An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

" 'Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule.' "

RULE 4 — BASIS OF PAY

" 'Section (b). Employes shall receive the same compensation in relief service as the employes they relieve.' "

RULE 6 — HOLIDAY WORK

" 'Section (a). Time worked on the following days:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

shall be paid for at the overtime rate when the entire number of hours constituting the regular week day assignment are assigned and worked.' "

The Organization argues that Claimants under Rule 4 should receive the same compensation for service on the subject holidays as the employes they relieve would have received had those employes worked the same holidays. It is urged that Rule 6 would guarantee the incumbents time and one-half holiday pay for service on the subject days and that Article II, Sections 1 and 3 would guarantee an additional eight hours pay at the pro rata rate for the holiday if compensated service is credited to workdays immediately preceding and following each holiday as herein.

Numerous awards have dealt with this issue directly or collaterally, among them 7981 (Elkouri), 8390 (Coburn), 11317 (Moore), 11972 and 11977 (Kane), 12180 (Kane), 14501 (Dorsey), all following Award 7977 (Elkouri) which is persuasive to this Board and is adopted herein.

Carrier attempts to distinguish Award 7977 from the claims at bar in that the Claimant therein worked all three days on the same position as relief whereas Claimants herein shifted positions daily. This Board is not persuaded that such distinction is material inasmuch as compensated service was performed on workdays of the workweek of Claimants preceding and following each holiday and the basis of claim is the position occupied on the holiday itself.

Carrier offers Award 9117 (Begley) as denying holiday pay on the precise question presented in this case, but a reading of the Award reveals that Agreement Rule 23 (j) relied on by Claimant there states: "An extra employe will receive the same **rate of pay** as the employe he relieves" [Emphasis ours]. "Rate of pay" is a far more restrictive expression than "compensation" as found in Rule 4, Section (b).

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14743, DOCKET TE-11338
(Referee Rambo)

Each of the claimants here claims ". . . the same compensation for **work performed on Position No. 247*** . . . that it would have paid the regular occupant of the position had he worked . . ." on a holiday. Claimants were paid a day at time and one-half, but assert they should also have been allowed holiday pay (8 hours).

All parties to the dispute concede that the claimants were not "regularly assigned" and therefore did not qualify for holiday pay under the provisions of Article II of the August 21, 1954 Agreement, standing alone. The claim is expressly based on Rule 4(b) in the controlling Agreement and the following statement of the Employes is typical of their clear and consistent statements of their position:

> "It is the position of the employes that the Carrier violated the parties' Agreement when it failed and refused to pay Relief employe W. G. Cross, **the same compensation for work performed on Position No. 247** 'BD' General Telegraph Office, San Francisco, California, **January 1, 1958 (a holiday)** that it would have paid the regular occupant of the position had he worked his assignment on this day."

Carrier unqualifiedly agreed with the Employes that under Rule 4(b) each claimant was entitled to the ". . . same compensation for work performed on . . . a holiday . . ." that the regularly-assigned employe would have received for that same work.

The case thus presented a very clear and simple question to which the Referee should have confined himself, namely, what would the occupant of each position have been paid for "work performed on the holiday"?

The simple and incontrovertible answer to that question is that the occupant would have received only one day's pay at the time and one-half rate, precisely the same pay originally allowed these claimants by the Carrier, and he would not have received for that work the holiday allowance here claimed. This answer is incontrovertible because it is admitted on all sides that the two regularly-assigned employes whose positions were filled by

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* Emphasis herein by us unless otherwise indicated.

claimants on the involved holidays were both properly paid the holiday allowance, though they performed no work on the holiday. The Employes concede that each of these regularly-assigned employes performed the qualifying service on his assigned position the days immediately preceding and following the holiday but did not work on the holiday. It is thus conclusive that the holiday allowance here claimed is not compensation for work performed on a holiday, and the claim should have been denied.

Without rhyme or reason, the Referee finds that compensation "for work performed on the holiday" includes a duplicate holiday allowance which is admittedly not compensation for work performed on the holiday. The duplicate payment arises from the fact that the regularly-assigned occupant of each position, because of his regularly-assigned status and his performance of the qualifying service on the days immediately preceding and following the holiday, was given a holiday allowance.

The Referee cites Award 7981 as a basis for this unusual result. Under the fact situation presented in Award 7981 the extra man took the place of the regularly-assigned employe in performing qualifying service on the regular employe's position on the work days immediately preceding and following the holiday. He thus stood in the regular employe's stead in performing the service that would have qualified the regular employe for holiday pay. Claimants in the instant case did not take the place of the regular employes in performing the service that would have qualified them for a holiday allowance. The employes whose positions were filled by these claimants on the holidays involved performed qualifying service on those positions and were paid the holiday allowance.

The Referee blandly states that he is not impressed with this categorical distinction between the facts in this case and the facts in Award 7981. In view of the unqualified agreement of the parties that each claimant in the instant case is only entitled to the same compensation that would have been allowed the regular employe **for work performed on the holiday**, we find it impossible to justify the Referee's refusal to recognize that this distinction in the facts renders Award 7981 irrelevant to the issue presented here.

The Referee cites a number of other awards which he states ". . . have dealt with this issue directly or collaterally, . . ." It would be interesting, indeed, to have him explain just how the awards cited have any bearing whatever on the single, clear, and simple issue which all parties admitted was controlling in this case.

We dissent.

/s/ G. L. Naylor

/s/ R. A. DeRossett

/s/ H. K. Hagerman

/s/ C. H. Manoogian

/s/ W. M. Roberts

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