

Award No. 15436
Docket No. TE-13944

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Southern District), that:

CLAIM NO. 1

1. Carrier violated the rules of Agreement on November 23, 1961, Thanksgiving Day, when it failed to call J. E. Huffman, regular assigned second shift operator, Springfield Yard, to perform the work of handling Train P&E No. 92 through the interlocking plant at Springfield Yard.

2. Carrier shall compensate J. E. Huffman 8 hours at time and one-half rate for November 23, 1961, in addition to the compensation he has received, for the violation.

CLAIM NO. 2

1. The Carrier violated the agreement between the parties when on Wednesday, July 4th, 1962, a legal holiday, they blanked a 7-day week position at Urbana Yard, Urbana, Illinois, in violation of Article 23 and Article 24 of the current agreement. Operator Patterson was not permitted to work on the above stated date, and was paid at the pro-rata rate of \$2.524 per hour for 8 hours' work.

2. The Carrier shall compensate Mr. J. W. Patterson who was held out of his regular position on July 4th, 1962, for an additional time and one-half rate for the day, in accordance to Article 23 covering legal holidays.

Compensation due Mr. J. W. Patterson.....\$30.29

CLAIM NO. 3

1. The Carrier violated the agreement between the parties when on Wednesday, May 30, 1962, a legal holiday, they blanked a 7-day week position at Urbana Yard, Urbana, Illinois, in violation of Article 23 and Article 24 of the current agreement. The operators were not permitted to work on the above stated date. The operators involved were paid for 8 hours' work at the pro-rata rate of \$2.524 per hour.

2. The Carrier shall compensate Mr. J. H. Davis, Norma J. Elkins and Mr. J. W. Patterson, who were held out of their regular positions on May 30, 1962 for an additional time and one-half rate for the day, in accordance to Article 23 covering Legal Holidays.

Compensation due J. H. Davis.....\$30.29
Compensation due Norma J. Elkins.....\$30.29
Compensation due J. W. Patterson.....\$30.29

EMPLOYEES' STATEMENT OF FACTS: The three claims involved in this dispute concern the issue of whether the Carrier is required to pay the regularly assigned employee eight hours at time and one-half for a work day which happens to be a holiday under the agreement in effect on this property.

In Claim No. 1, Claimant J. E. Huffman was advised on November 10 by message that his position of second shift at Springfield Yard would not work on Thanksgiving, November 23.

At about 7:00 P. M. on November 23, 1961, the dispatcher in charge of the section of track that includes GN Tower where Claimant Huffman was regularly assigned but not on duty was notified that P&E Train No. 92 would arrive at GM Tower, Springfield, Ohio about 7:30 P. M. The dispatcher made no attempt to call Mr. Huffman to perform the work that was necessary in order to pass the train through this interlocking plant at GM Tower. A message was transmitted to P&E Train No. 92 at Linden Avenue, Springfield, Ohio, reading as follows:

"Telegraph Office at Springfield Yard is a closed station."

When P&E Train No. 92 arrived at GM Tower, Springfield, the train stopped at the red signal, and a member of the train crew went to the interlocking tower, broke the lock on the door, and used the telephone to report to the dispatcher that the signal was standing in a red position, and asked for instructions. The dispatcher by verbal orders instructed the member of the crew to check the tracks and, if they were lined properly, to proceed past the red signal.

A claim was made in behalf of Mr. Huffman for eight hours at time and one-half, and the Carrier's General Manager offered a settlement of a two-hour call at time and one-half. The Employees rejected this settlement as not being in accordance with the rules of the agreement and the claim was appealed to the highest officer designated by the carrier and declined by him.

In Claim No. 2, claims were made for J. H. Davis, the operator-clerk at Urbana, Illinois, and J. W. Patterson, also operator-clerk at Urbana, Illinois, for eight hours at time and one-half rate in addition to the eight hours at

CLAIM NO. 2

Claimant Operator J. W. Patterson was the regularly assigned second trick operator at Urbana, Illinois, with Monday and Tuesday as assigned rest days and relief furnished. On Wednesday, July 4, 1962 (holiday), claimant was given proper advance notice that his job would be laid in, due to decrease in traffic. He was paid eight hours at pro rata rate under the "Paid Holiday" rule.

As in Claim No. 1, the Employees contend, under Schedule Rules, Carrier is barred from laying in 7-day jobs and claim an additional eight hours at time and one-half.

CLAIM NO. 3

Claimants were regularly assigned as operators on 7-day jobs at Urbana, Illinois, as follows:

Name	Trick	Rest Days
J. H. Davis	First	Sunday and Monday
Norma J. Elkins	Relief, assigned to second trick on Wednesday, May 30, 1962	Friday and Saturday
J. W. Patterson	Third	Thursday and Friday

On Wednesday, May 30, 1962 (holiday), all three tricks of operators, by proper advance notice, were laid in due to decrease in traffic. Claimants were paid eight hours at pro rata rate under the "Paid Holiday" rule.

As in Claims Nos. 1 and 2, Employees contend Carrier, under Schedule Rules, is barred from laying in 7-day jobs, and an additional eight hours at time and one-half is claimed.

OPINION OF BOARD: This dispute arose when Carrier blanked a 7-day position of the regularly assigned Operator on the claim dates which were the holidays of Thanksgiving Day, November 23, 1961; Independence Day, July 4, 1962; and Memorial Day, May 30, 1962.

Organization makes claim for additional time and one-half rate for the named Operators on the grounds that they were paid under Article 24, the Guarantee Rule, but were not also paid under Article 23, the Holiday Rule. Moreover, it contends that on November 23, 1961, Carrier permitted the Dispatcher, by verbal order, to instruct the train crew so that P&E Train No. 92 could pass through the interlocking plant. Inasmuch as others outside of the Agreement performed the work for which it alleges the regular Operator J. E. Huffman should have been called, Organization requests payment for him for eight hours at time and one-half rate.

The issue of whether Carrier has the right to blank holidays has been considered by this Division in a number of awards. Most of them have held that Carrier was within its rights in blanking positions on holidays, provided payment for eight hours at the straight time rate is made. We concur in these decisions. See Awards 8539, 10594, 11253, 11433, 13259 and 13277.

Although Carrier was not prohibited from blanking the position on Thanksgiving Day, November 23, 1961, the Agreement does not permit it to assign the handling of a train order to employes outside of the Telegrapher Agreement. Since telegrapher work was done at GM Tower, Springfield, Ohio, and the Telegrapher was not used, the Agreement was violated.

For the reasons stated, we hold that Claim Nos. 2 and 3 are denied and Claim No. 1 is sustained. Accordingly, Mr. Huffman is allowed compensation for eight hours at time and one-half rate for November 23, 1961, in addition to the compensation he has received. See Awards 9203, 12780 and 13636.

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

Decision in accordance with Opinion.

AWARD

Decision in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1967.