



Award No. 16317
Docket No. TE-15208

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central of Georgia Railway, that:

CLAIM NO. 1

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions September 2, 1963 (Labor Day), a holiday.

2. The Carrier shall pay the following claimants a day's pay (8 hours) at the time and one-half rate for September 2, 1963 (the holiday) in addition to the day's pay (8 hours) at the pro rata rate paid them:

1. W. C. Hunt, Newnan, Ga.
2. J. E. Hight, Sargent, Ga.
3. J. M. Arnold, Yates, Ga.
4. E. H. Murphy, Carrollton, Ga.
5. H. E. Love, Bowden Jct., Ga.
6. R. V. Burns, Lyerly, Ga.
7. D. Earnest, Summerville, Ga.
8. D. A. Strickland, Trion, Ga.
9. W. D. Aiken, Lafayette, Ga.
10. L. H. Pittman, Chicamauga, Ga.
11. J. C. Strickland, Rossville, Ga.

3. The Carrier shall pay S. M. Mize, Cedartown, Georgia, a day's pay (8 hours) at the time and one-half rate for September 2, 1963 (the holiday) in addition to the day's pay (8 hours) at the

pro rata rate paid him, less five (5) hours at the time and one-half rate paid him for working on said day.

CLAIM NO. 2

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions September 2, 1963 (Labor Day), a holiday.

2. The Carrier shall pay the following claimants a day's pay (8 hours) at the time and one-half rate for September 2, 1963 (the holiday) in addition to the day's pay (8 hours) at the pro rata rate paid them:

1. J. P. Massengale, East Point, Georgia
2. W. G. McClung, Army Depot, Georgia
3. C. H. Thompson, Thomaston, Georgia
4. Mrs. P. P. Addington, Hampton-Griffin, Georgia
5. J. H. Duke, Hapeville, Georgia
6. C. M. Hand, Jonesboro, Georgia
7. J. C. Fain, Barnesville, Georgia
8. A. Q. Wyatt, Forsyth, Georgia

CLAIM NO. 3

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions September 2, 1963 (Labor Day), a holiday.

2. The Carrier shall pay the following claimants a day's pay (8 hours) at the time and one-half rate for September 2, 1963 (the holiday) in addition to the day's pay (8 hours) at the pro rata rate paid them:

1. J. S. Hays, Watkinsville, Georgia
2. Mrs. M. D. King, Gray, Georgia
3. E. D. McBridge
4. Mrs. G. D. Griggs, Machen, Georgia
5. C. J. Griggs, Monticello, Georgia

CLAIM NO. 4

1. The Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate the occupants of regularly assigned positions September 2, 1963 (Labor Day), a holiday.

2. The Carrier shall pay the following claimants a day's pay (8 hours) at the time and one-half rate for September 2, 1963 (the holiday), in addition to the day's pay (8 hours) at the pro rata rate paid them:

1. E. M. Wood, Metter, Georgia
2. H. L. Marsh, Statesboro, Georgia
3. D. R. Carter, Bartow-Davisboro, Georgia
4. B. Hall, Jr., Eatonton, Georgia
5. H. R. Orr, Toombsboro, Georgia
6. R. L. Jackson, McIntyre, Georgia
7. P. L. Canaday, Wadley, Georgia
8. R. L. Carter, Oconee, Georgia
9. M. E. Frost, Milledgeville, Georgia
10. W. G. Day, Covington, Georgia
11. H. Grover, Savannah, Georgia
12. C. L. Yeomans, Waynesboro, Georgia

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Central of Georgia Railway, hereinafter referred to as Carrier, and its employees in station, tower and telegraph service, hereinafter referred to as Employees, as represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective October 31, 1959 and as amended. Copies of said Agreements are available to your Board and are, by this reference, made a part hereof.

At pages 45 through to the middle of page 50 of said Agreement, under the caption "Schedule of Wages" are listed the positions, the regular occupants of which are the Claimants involved in these four (4) disputes.

The four (4) claims incorporated into this appeal were handled separately on the property. The National Agreement of August 21, 1954, Article V, sets out the procedures and time limitations for the presentation and the processing of claims and grievances. There is nothing in this Agreement which prohibits the Organization from merging claims between the same parties, arising out of the same Agreement and involving the same issues, providing each of the claims is presented within the time limits prescribed by said Agreement, and providing that the claims are presented in accordance with other provisions of the Agreement. This procedure has been approved by your Honorable Board in Awards 11300 (Moore), 11174 and 11120 (Dolnick), 10619 (LaBelle), and 4821 (Carter), among others.

The Employees respectfully request that their briefs in Docket TE-12630 (ORT 3274), now in pendency before this Division of the Adjustment Board, be considered a part of its briefs in this case, for the reason that the facts are similar in each case and the rules involved are equally applicable. The Employees particularly direct your Honorable Board's attention to pages 1 through 20 of said brief in Docket TE-12630, captioned "Employees' General Statement of Facts", wherein some of the background of these disputes are set forth.

Each of the claims of an alleged violation in this case were filed by the Employees' representatives and duly handled by the parties in strict keeping with Rule 20, Time Limits (originally Article V of the November 5, 1954 Non-Ops' Agreement). The claims were appealed up to and including the Director of Personnel, who is Carrier's highest designated officer to whom claims such as this may be appealed. These claims have been denied at each and every stage of handling on the property for the reason the employees have failed to cite any rule, interpretation or practice which gives them what they are demanding here. These baseless claims have no semblance of merit, and, in fact, constitute "an all-to-gain-and-nothing-to-lose" proposition from start to finish.

The claims, being without any semblance of merit, were denied on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue involved herein is whether or not Claimants are entitled to 8 hours' pro rata pay under Rule 4(f) of the Agreement (Guarantee Rule) as well as 8 hours' pay at time and one-half for the Labor Day holiday under Rule 7 — Part 2 of the Agreement.

The facts are that Carrier notified Claimants that their respective agencies would be closed on Monday, September 2, 1963, Labor Day, because of said holiday. Claimant Mize did work 5 hours on said holiday; however, he was paid time and one-half for said 5 hours' work, in addition to 8 hours' pro rata pay for the holiday.

Carrier's position is that Rule 4(f) does not require Carrier to work all employees on all holidays; that it paid Claimants 8 hours' straight time pay for the holiday, as required by the Agreement, after blanking the Claimants' position on the holiday due to lack of business on said day.

The Organization argues that the pay provision requirements of the Holiday Rule (Rule 7—Part 2) cannot be used to offset the pay provisions requirements of the Guarantee Rule (Rule 4(f)). In its ex parte submission, the Organization argues that under Rule 4(f) of the Agreement, Claimants were entitled to work the holiday in question, and if they worked they would have been entitled to the pay provisions of Rule 7 of the Agreement, namely, a day's pay at the time and one-half rate. This latter contention of the Organization was rejected by this Board in Award 13259 (Hall), involving the same parties to this dispute, when the Board held: "Rule 4(f) does not guarantee that employees will work on holidays."

The Organization, however, in its oral argument, contends that prior to the August 21, 1954 Agreement, Rule 4(f) of the Agreement was in existence, and it provided for 8 hours' pro rata pay for a holiday, and that Rule 7—Part 2 of the Agreement (similar to the holiday provisions of the August 21, 1954 Agreement) entitled Claimants herein to an additional 8 hours' pro rata pay for the holiday. In its oral argument in regard to said contention, the Organization argues that this Board is bound by the rules of the Agreement and, therefore, Rule 4(f) and Rule 7—Part 2 entitle the Claimants to two (2) days' pay at 8 hour pro rata time for the holiday.

With this contention we cannot agree. In Award 9577 (Johnson) this Board was faced with a similar question as in this dispute as to whether the

Claimants in that case were entitled to holiday pay twice. The Referee in that Award laid down principles which we feel are analogous to and controlling in this dispute. Referee Johnson in said Award 9577 stated:

"A guarantee is somewhat different from the ordinary holiday pay provision, although from the employee's point point of view the result is the same. But even if the holiday phase of Special Rule 1 is regarded as equivalent to a holiday pay rule, which it is in final effect, the 1954 Agreement does not authorize duplicate pay. The situation is simply this: by Special Rule 1 the Carrier guaranteed the Claimants, or in effect agreed to pay them, holiday pay. Thus, there are now two separate Rules providing that these Claimants are entitled to receive holiday pay, but both rules are obeyed when Claimants receive holiday pay once; neither rule provides for duplicate holiday pay, and all the rules must be considered together."

As was said in Award 10166 (Gray):

"It is now settled by the Opinions of this Board that an ordinary daily or weekly guarantee rule and Article II of the 1954 National Agreement do not create two distinct allowances, thereby doubling or even tripling the income of the employee on holidays not worked. . . ."

Therefore, it is the conclusion of this Board that it was not the intent of Rule 7 - Part 2 of the Agreement to give a second holiday payment to employees already entitled to holiday payment under Rule 4(f) of the Agreement; and, when Carrier paid Claimants herein one day's holiday pay, Carrier, therefore, complied with both Rule 4(f) (Guarantee Rule) and Rule 7 - Part 2 (Holiday Rule). Therefore, we must deny these claims.

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 was not violated by the Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.

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