Award No. 16457
Docket No. TE-15326

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow compensation to Mr. A. D. Light for eight (8) hours at the straight time hourly rate of the position to which assigned for New Year's Day, January 1, 1964.

2. Carrier shall now be required to compensate Mr. A. D. Light in the sum of $20.87 — representing eight (8) hours' holiday pay at the pro rata rate of the operator position in RH Office, Raleigh, North Carolina, for January 1, 1964 (New Year's Day).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Seaboard Air Line Railroad Company, hereinafter referred to as Carrier, and its employes in the telegraphers' class, as represented by The Order of Railroad Telegraphers, hereinafter referred to as Employes and/or Organization, effective January 1, 1959, and as amended. Copies of said Agreements are available to your Board and are, by this reference, made a part hereof. Among the agreements between the parties is the Non Ops Agreement of August 19, 1960. Article III–Holidays of this Agreement reads as follows:

"ARTICLE III. HOLIDAYS

Article II, Sections 1 and 3 of the Agreement of August 21, 1954 are hereby amended, effective July 1, 1960, to read as follows:

Section 1. Subject to the qualifying requirements applicable to regularly assigned employes contained in Section 3 hereof, each regularly assigned hourly and daily rated employe 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 employe:

January 1 holiday would not entitle him to holiday payment any more than if he had returned to the position some several months later and during the interim submitted claims for pro rata pay on any holidays which fell during what was his work week as a telegrapher before beginning service as a dispatcher.

In your letter of January 29, presenting claim on behalf of Mr. Light to Superintendent Winfree, you have referred to Third Division Award 11317. I have seen this Award and, in my opinion, it is completley unsound. Furthermore, it does not follow the previous interpretations of Sections 1 and 3, Article II of the August 21, 1954 Agreement, as in Second Division Awards 2467, 2485 and 3806. The employes' position in Award 11317 was '. . . that claimant was regularly assigned at all times and, therefore, properly in line to be paid for the two holidays involved.' and 'Claimant received compensation on his work days immediately preceding and following each holiday . . .'; thereby contending that compensation as a dispatcher entitled claimant to holiday pay under the telegraphers' agreement. I am wondering where the employes in Award No. 11317, or, for that matter, where you would draw the line, if, for example, a telegrapher who held a regular operator's assignment were used on a temporary position of train dispatcher or yardmaster for the entire year without returning at any time to his telegrapher's position. In such cases, is it your position that he would be entitled to receive a day at pro rata for each of the seven holidays that might fall on what was the work week of his former position as a telegrapher? In fact, if your position were proper, and inasmuch as there is no time limit for determining when a temporary promotion becomes a regular position, it is conceivable that an employe could remain on such a temporary promotion for years and continue receiving periodical holiday pay bonuses under the Telegraphers' Agreement. I do not see how that could have possibly been the intent of those who negotiated the rule in question.

I note your reference to the statement of the Emergency Board in the dispute which resulted in the August 21, 1954 Agreement that 'the Board is strongly influenced by the desirability of making it possible for the employes to maintain the normal take home pay in weeks during which a holiday occurs.' During the two months of December and January, Mr. Light worked a total of 36 days as train dispatcher in addition to 11 days as operator. Although the rule which must be interpreted in the instant dispute does not provide for maintenance of any so-called normal take home pay, it is, however, obvious that Mr. Light more than maintained such normal take home pay during the period involved.

The claim on behalf of Mr. Light has no contractual merit for reasons which I have cited herein, and is therefore respectfully declined."

OPINION OF BOARD: Claimant is the regular occupant of operator's position in RH telegraph office at Raleigh. In addition to holding regular assignment under the Telegraphers' Agreement, he also works as an extra train dispatcher pursuant to the provisions of Rule 15(q). Claimant worked

assignment as extra train dispatcher on December 31, 1963, following which he returned to service under the Telegraphers' Agreement. His regularly assigned position was not filled on January 1, 1964, as Carrier blanked the assignment on the holiday. Claimant did work his position of Operator January 2, 1964, the day immediately following the holiday. Claimant was not paid holiday pay for January 1, 1964, New Year's Day, and makes claim for "eight hours' pay at the pro rata rate of the position to which assigned" pursuant to the provisions of Article III–Holidays, of the Non Ops Agreement of August 19, 1964.

Carrier argues that Claimant is not entitled to the holiday pay under the rule because service performed by claimant under the Telegraphers' Agreement and the Train Dispatchers' Agreement may not be combined for the purpose of qualifying for holiday pay under provisions of Article III of the August 19, 1960 Agreement. Carrier, in support of its position, cites Second Division Awards 2467, 2485 and 3806, and attacks the Third Division Award 11317 which sustained the Employes' position. The Train Dispatchers' Agreement makes no provision for holiday pay.

The question at issue in the instant dispute is the same factual situation and same rules involved in Award 11317 (Moore), which followed the opinion expressed in Award No. 82 of Special Board of Adjustment No. 192, wherein it was held:

> "We think it is clear from the above quoted language that the framers of the Agreement recognized that it is not unusual for regularly assigned employes under non-operating agreements to hold dual seniority. We can read no intent in that language to disqualify a regularly assigned employe under the Clerks' Agreement for holiday pay because he may have worked under some other agreement either on the day before or the day after or on the holiday. As a matter of fact, the language of the Agreement appears to have been carefully drawn so as to preclude such a result."

Upon analysis of Second Division Awards 2467, 2485 and 3806, we find no conflict as to these denial awards which would make the Board's findings in Award 11317 as "completely unsound." In these Second Division Awards, the claimants were temporarily assigned to fill the position of Foreman. During their period of assignment they were acting as foreman and did foreman's work. They were paid foreman's pay both before and after a holiday. Foremen covered by their effective agreement do not receive any pay for holidays as such. It is clear that these claimants were "regularly assigned" to the Foreman's position both before and after a holiday and were under the Foreman's Agreement which did not provide for holiday pay. Such findings by the Second Division would necessarily hold true in the instant dispute if claimant had not been released from his "regular assignment" as an extra train dispatcher December 31, 1963.

In our opinion, the Second and Third Division Awards relied upon by the parties have in fact established that an employe may not circumvent or misconstrue to his own benefit the intent and language of each respective agreement. He may not attempt to obtain bonus benefits in the form of holiday payments just because he retains position and seniority rights under one agreement while performing under the other. Said holiday payment is determinable by his release from the "regular assignment" under the one agreement and his reversion to his "regular assignment" under the other.

In the instant dispute, claimant was released from his "regular assignment" as extra train dispatcher December 31, 1963. He, pursuant to Rule 15(q), returned or reverted to his "regular assigned" position under the Telegraphers' Agreement. He was available for his regular assigned position in the telegraph office, but Carrier blanked his assignment on the holiday, January 1, 1964. He worked January 2, 1964 under the Telegraphers' Agreement and is, therefore, entitled to the holiday pay thereunder.

For the foregoing reasons, we will sustain the claim.

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 28th day of June 1968.

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