

Award No. 16789
Docket No. CL-16304

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6027) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly Rules 4-A-4(f), 9-A-1, 9-A-2, among others, when it failed and refused to compensate extra monthly rated employees temporarily assigned to a holddown vacancy in regular positions for the period of such temporary assignment in accordance with the provisions of the Agreement applicable to the regular assigned employees.

2. The Carrier shall pay the following extra assigned monthly rated clerks temporarily assigned to a holddown prior to September 6, 1965 and including September 7, 1965 a day's pay for September 6, 1965 as was paid to the regular assigned employee.

T. Hodell (holddown) Nostrand Avenue

3. The Carrier shall pay the following extra assigned monthly rated clerks temporarily assigned to a holddown prior to October 12, 1965 and including October 13, 1965 a day's pay for October 12, 1965 as was paid to the regular assigned employees.

Name	Holddown Position
F. Scanlon	Wantagh Station
B. Ghent	Flatbush Avenue Station
G. Foote	Queens Village Station
P. Clerke	Oakdale Station
J. O'Rourke	Garden City Station
H. Rybecky	Manhasset Station
J. A. Haig	Treasurer's Office
E. G. McElwee	Cabin No. 1 Relief Clerk
H. Deery	Patchogue Station

4. The Carrier shall pay all other affected extra assigned monthly rated employees temporarily assigned to a holddown prior to and after a holiday a day's pay for the holiday in accordance with the provisions of the Clerks' Agreement applicable to the regular assigned employees, effective September 6, 1965 and each holiday thereafter until the violations are corrected and the extra assigned employees are compensated the same as the regular assigned employees.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreements effective July 1, 1945 and a newly revised Agreement effective January 1, 1965, and National Holiday Agreements signed at Chicago, Illinois, on August 21, 1954, August 19, 1960 and November 20, 1964 covering clerical, other office, station and storehouse employees between this Carrier and this Brotherhood. The Rules Agreements may be considered a part of this Statement of Facts. Various Rules and Memorandums therefore may be referred to from time to time without quoting in full.

This dispute involves the Employees' understanding and contention that Rule 4-A-4 (f) of the Clerks' Agreement explicitly stipulates that an extra employee temporarily assigned to a holddown vacancy in a regular position shall be compensated for the period of such temporary assignment in accordance with the provisions of this Agreement applicable to the regular assigned employee. Therefore if the regular assigned employee is compensated for the holiday, the extra assigned employee on the holddown is likewise to be compensated for the holiday in accordance with the provisions of this Agreement applicable to the regular assigned employee.

On October 28, 1965 when it became apparent the Carrier would not pay the extra assigned clerks on holddown positions prior to and after September 6, 1965 and October 12, 1965 the same compensation as that paid to the regular assigned employees in accordance with the Clerks' Agreement, Mr. D. Waldman, Local Chairman submitted a claim in their behalf to Mr. J. Sabina, Jr., Manager Stations. (See Employees' Exhibit A.)

On November 4, 1965, Mr. J. Sabina Jr., replied to Mr. D. Waldman, Local Chairman, advising him the claim was denied.

Mr. Waldman and Mr. Sabina Jr. were unable to agree upon a Joint Statement of Agreed Upon Facts on November 10, 1965. On December 23, 1965, Mr. Waldman wrote Mr. Sabina Jr. rejecting his denial of the claim.

On December 29, 1965 Mr. Sabina Jr., Manager Stations submitted his ex-parte statement of facts to Mr. H. J. Bellis, Director of Personnel. Copy was later sent to Mr. T. J. Hewson, General Chairman. (See Employees' Exhibit B.)

On December 30, 1965, Mr. D. Waldman Local Chairman submitted his ex-parte statement of facts to Mr. T. J. Hewson, General Chairman and Mr. H. J. Bellis, Director of Personnel. (See Employees' Exhibit C.)

A meeting was held on January 24, 1966 between the highest officer of the Carrier Mr. H. J. Bellis, Director of Personnel and Mr. T. J. Hewson, General Chairman to further discuss this claim.

On January 31, 1966, Mr. H. J. Bellis, Director of Personnel wrote Mr. Hewson, General Chairman, denying the claim. (See Employees' Exhibit D.) He

denied the claim. A copy of this denial is attached hereto and made a part hereof, marked Carrier's Exhibit D.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole question to be determined in this dispute is whether the governing agreements provide holiday pay for monthly rated extra employees.

The Petitioner asserts that Rule 4-A-4(f) of the Clerks' Agreement "explicitly stipulates that an extra employee temporarily assigned to a hold-down vacancy in a regular position shall be compensated for the period of such temporary assignment in accordance with the provisions of this Agreement applicable to the regularly assigned employee."

Carrier contends that Claimants were monthly rated employees on hold-down assignments prior to and after September 6, 1965 (Labor Day), and prior to and after October 12, 1965 (Columbus Day) and as such were not entitled to be paid for either date. Carrier further contends that the application of Rule 4-A-4(f) was limited to the benefits accruing to the position of the regularly assigned employee, i.e. hours of work, rates of pay, and rest days; but was not, Carrier continues, intended to include those benefits to which the regular employee was "individually and personally" entitled.

Rule 4-A-4(f) reads as follows:

"An extra employee temporarily assigned to a holddown vacancy in a regular position shall be compensated for a period of such temporary assignment in accordance with the provisions of this Agreement applicable to the regularly assigned employee."

It is not disputed that since August, 1954 (and since the August 21, 1954 National Agreement), extra monthly rated employees on holddowns have been paid in accordance with the provisions of Rule 4-A-4(f) with the exception of the holiday pay. Holiday pay is the only question in this dispute.

The language of Rule 4-A-4(f) is clear: the extra monthly rated employee is to be compensated "in accordance with the provisions of this Agreement applicable to the regularly assigned employee." (Emphasis ours.)

Thus, contrary to Carrier's contention, the extra employee is not limited to the conditions of the position; he takes what the regularly assigned employee takes under the circumstances. See Awards 7977 and 8390, and compare Award 12594 (where the Board held that the language of that agreement required the extra relief employee to assume the conditions of the assignment rather than the person of the regularly assigned employee).

Moreover, the language of Rule 4-A-4(f) is without restriction, exception, or qualification. The Board is not at liberty to add to or take away from the clear and unambiguous wording of the rule.

While the Board finds that Paragraphs 1, 2 and 3 of the Claim should be sustained, it also finds that Paragraph 4 must be denied. There is nothing to indicate that these unnamed claimants are readily identifiable, nor is there any specification of dates. Awards 12366 and 14468.

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 violated.

AWARD

Paragraphs 1, 2 and 3 of the Claim are sustained, and Paragraph 4 of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.