

Award No. 16987
Docket No. TE-16360

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Richmond, Fredericksburg and Potomac Railroad, that:

1. Carrier violated an Agreement between the parties hereto when it failed and refused to properly compensate W. T. Holmes for service performed on Monday, September 6, 1965, a holiday, also one of his assigned rest days.
2. Carrier shall, because of the violation set out above, compensate W. T. Holmes for eight (8) hours at the time and one-half rate, in addition to the amount he has been paid, for service performed on September 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Richmond, Fredericksburg and Potomac Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective April 10, 1953, as amended and supplemented, is available to your Board and is, by this reference, made a part hereof.

The question presented by this dispute is, has Carrier bound itself by said Agreement to pay compensation under two (2) separate rules of said Agreement when an employee is required to work on his assigned rest day, which is also one of the seven (7) national holidays covered by the Agreement?

This identical question under the same rules and factual circumstances extant here has been presented to your Honorable Board by this Union on at least seven (7) prior occasions, and your Board has in each instance ruled in favor of the Employees' position. See Awards 14138 (Rohman), 12471 (Kane), 12453 (Sempliner), 11899 (Hall), 11454 (Miller), 10679 (Moore), 10541 (Sheridan), among others. In addition to the body of awards supporting the Union's (the petitioner) position in the subject dispute, the Clerks'

tation the parties have placed on said rules are indicative of the intent of the parties that one payment of time and one-half for time worked covers any combination of circumstances under which overtime is due.

Our position is that the interpretation the parties have placed on the rules is controlling, rather than an erroneous interpretation made on other rules on other properties by a referee who was obviously unfamiliar with the intent of the rules, the general industry practice thereunder, or of the Third Division's lack of jurisdiction to write new rules under the guise of interpretation. The Agreement was not violated in this instance, and the claim is accordingly denied.

In an attempt to get Award 10541 and subsequent awards overruled, several other railroads now have this issue before the Third Division in Telegrapher disputes. We have the same issue before the Third Division in a Clerks' dispute. It might be possible to hold this matter in abeyance pending an award in one of those disputes. If you are interested in this idea, please advise."

OPINION OF BOARD: Claimant, a regular employe, worked on a holiday (Labor Day, September 6, 1965), which was also one of the rest days assigned his position. Article IX, Section 2(d) provides service rendered on a rest day will be paid for at the overtime rate, and Article IX, Section 3(a)(1) provides that time worked on the specified holidays, one of which is Labor Day, will be paid for at the time and one-half rate. For service performed on the day in question, Carrier paid Claimant eight hours at the time and one-half rate, and the claim here is for an additional such payment.

Beginning with Award 10541, which has been followed in numerous subsequent awards, among the latest being Award Nos. 16785, 16797, 16801 and 16803, the issue here involved has been decided in favor of the Employees, and we see no reason to depart therefrom. The claim will be sustained.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1969.

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