



Award No. 17161

Docket No. TE-16538

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James Robert Jones, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

1. The holiday provisions of the Agreement of August 19, 1960 provide in Section 3, that:

"For the purposes of Section 1, the work of other than regularly assigned employees shall be Monday to Friday . . ."

Thus in a week in which one of the seven recognized holidays occurs, a work week of Monday to Friday, with rest days of Saturday and Sunday, is established for extra block operators. In the week in 1964 in which Washington's Birthday occurred, Monday, February 17, to Friday, February 21, were work days, and Saturday, February 22, and Sunday, February 23, were rest days for extra block operators.

2. The following extra block operators performed service on Saturday, February 22, 1964, for which they were compensated at time and one-half:

J. Sheils—Zoo, Assistant to Train Director

H. Chorney—Brill, Block Operator

K. Clark—Penn, Leverman

M. Egan—Zoo, Assistant Train Director

3. Since the aforementioned extra block operators performed service on February 22, which was simultaneously a holiday, compensable at time and one-half, Regulation 4-H-1(b), and also their assigned rest day, also compensable at time and one-half, Regulation 4-J-1, they should have been allowed a total of three days' pay for service performed on February 22, 1964, as supported by Third Division Awards 10541, 10679, 11454 and 11899.
4. Claim is now made on behalf of the aforementioned extra block operators in accordance with Article 5 of the Agreement of August 21, 1954, that these employees should each now be allowed an additional day at time and one-half at the rate of the position filled on February 22, 1964.

Thus, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are (1) whether Saturday, February 22, 1964 was a rest day of the Claimants' work week as alleged by the Employees and (2) whether the Claimants are entitled to the compensation claimed.

(Exhibits not reproduced)

OPINION OF BOARD: In this case, Claimants, extra block operators, worked on Saturday, February 22, 1964, which was a holiday. They received pay at time and one-half rate for working on the holiday. The question to be decided is whether that Saturday also constituted a rest day for Claimants thereby entitling them to an additional pay at time and one-half rate.

Claimants rely on Article III, Section 3 of the August 19, 1960 National Agreement to support their claim. Article III states 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 employees contained in Section 3 hereof, each regularly assigned hourly and daily rated employee 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 employee:

New Year's Day

Washington's Birthday

Decoration Day

Fourth of July

Labor Day

Thanksgiving Day

Christmas

Subject to the qualifying requirements applicable to other than regularly assigned employees contained in Section 3 hereof, all others who have been employed on hourly or daily rated positions shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him for each of the above-identified holidays if the holiday falls on a work day of the work week as defined in Section 3 hereof, provided (1) compensation

for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment.

The provisions of this Section and Section 3 hereof applicable to other than regularly assigned employees are not intended to abrogate or supersede more favorable rules and practices existing on certain "carriers under which other than regularly assigned employees are being granted paid holidays.

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above enumerated holidays.

Section 3. A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

All others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service.

Note: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

For purposes on Section 1, the workweek for other than regularly assigned employees shall be Monday to Friday, both days inclusive, except that such employees who are relieving regularly assigned employees on the same assignment on both the work day preceding and the work day following the holiday will have the workweek of the incumbent of the assigned position and will be subject to the same qualifying requirements respecting service and availability on the work days preceding and following the holiday as apply to the employee whom he is relieving. For other than regularly assigned employees, whose hypothetical work week is Monday to Friday, both days inclusive, if the holiday falls on Friday, Monday of the succeeding week shall be considered the workday immediately following. If the holiday falls on Monday, Friday of the preceding week shall be considered the workday immediately preceding the holiday."

Claimants contend that this Holiday Agreement provided an exception to the general rule of a seven day "workweek" for extra employees. Claimants say that Section 3 established a work week of five days, Monday to Friday and therefore Saturday and Sunday in a week in which a holiday occurs must be rest days for extra employees.

This Board cannot accept this reasoning. Regulation 5-G-1 sets out the work week for unassigned employees as consisting of seven consecutive days starting with Monday. The purpose of this regulation is to establish a 40-hour work week consisting of five days of eight hours work each day for unassigned or extra employees. The two days in which an extra employee does not work then become his rest days. In the instant case, none of the Claimants had worked their 40-hours prior to the February 22, holiday and therefore that day cannot be considered their rest day.

We can find nothing in the 1960 Agreement that changes the Regulations pertaining to the 40-hour work week for extra employees. Specifically, we can find no explicit language in the 1960 Agreement which stipulates regularly assigned rest days to extra employees.

Therefore finding that Claimants did not perform service on both a rest day and a holiday, we do not need to consider Carrier's contention that even if it had been a rest day, Claimants would not be entitled to an additional time and one-half pay.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

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