



**Award Number 17355**

**Docket Number CL-17917**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Murray M. Rohman, Referee**

**PARTIES TO DISPUTE:**

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

**WESTERN MARYLAND RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6519) that:

- (a) Carrier violated the rules of the Clerks Agreement when it failed to properly compensate Clerk C. C. Ditto, Jr., for services performed on February 24, 1968.
- (b) Clerk C. C. Ditto, Jr., shall now be allowed eight (8) hours pay at the rate of time and one-half for February 24, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** The Claimant occupies the position of Clerk, Hagerstown Diesel Shops, in the Maintenance of Equipment Department, Hagerstown, Maryland. This position is monthly rated and is considered a seven day assignment of the provisions of the rules agreement.

The Claimants work week is Saturday through Wednesday, with rest days of Thursday and Friday. The position is filled on the rest days by a regularly assigned relief clerk.

Washington's Birthday fell on Thursday, February 22, 1968, a rest day for the claimant. He returned to duty after his rest days (Thursday and Friday) on Saturday, February 24, 1968. Under the provisions of Rule 41, second paragraph:

"When a regularly assigned employee on a position described in Paragraph (d) of Rule 35 has an assigned relief day other than Sunday, and one of the holidays specified in this rule falls on such relief day, the following assigned day will be considered his holiday."  
(Emphasis is ours)

the Claimant entered claim for the time and one-half rate for eight (8) hours since he was working a holiday. (See Employees' Exhibit "A".)

The claim was denied under date of March 8, 1968 (See Employees' Exhibit "B") and appeal by the organization was made under the date of March 9, 1968 (See Employees' Exhibit "C").

This appeal was also declined by the Carrier (See Employees' Exhibit "D") and further progression of the claim was made by the organization in letter dated March 16, 1968 (See Employees' Exhibit "E") attached hereto. The

appeal was rejected by the Chief Mechanical Officer under date of March 19, 1968 (See Employees' Exhibit "F").

On March 24, 1968 the organization appealed the case to the Manager of Labor Relations, Mr. F. B. Plummer, the highest designated officer to receive grievances (See Employees' Exhibit "G").

The appeal was declined by Mr. Plummer in his letter to the organization dated May 13, 1968 (See Employees' Exhibit "H").

(Exhibits not reproduced)

**CARRIER'S STATEMENT OF FACTS:** C. C. Ditto, Jr. is regularly assigned as Clerk in the Maintenance of Equipment Department at Hagerstown, Maryland with a work week Saturday through Wednesday. The position he occupies is monthly rated and is filled on Thursday and Friday by a relief Clerk.

Washington's Birthday fell on Thursday, February 22, 1968, a rest day for the claimant, and the relief Clerk filling the position on that day received time and one-half rate for working on the holiday plus a day's pay for the holiday. The claimant makes claim for time and one-half rate for working on Saturday, February 24, 1968 under Rule 41 which reads:

**"RULE 41—HOLIDAY WORK—**

"Work performed on the following legal holidays, namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half.

"When a regularly assigned employee on a position described in Paragraph (d) of Rule 35 has an assigned relief day other than Sunday, and one of the holidays specified in this rule falls on such relief day, the following assigned day will be considered his holiday."

Rule 35 is the Five-Day Work Week Rule, Paragraph (d) of which reads as follows:

**"RULE 35—WORK WEEK—**

"(d) Seven-Day Positions. On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

(Exhibits not reproduced)

**OPINION OF BOARD:** The facts are not in dispute in the instant claim. Briefly, the Claimant is a regularly assigned monthly rated Clerk on a 7 day position, with a work week Saturday through Wednesday. In 1968, February 22, Washington's Birthday, fell on Thursday—Claimant's rest day. His first assigned day of work following the rest days was Saturday, February 24, 1968, for which he was compensated at the pro rata monthly rate. It is the Organization's contention that pursuant to Rule 41 of the effective Agreement, the Claimant should have been compensated for 8 hours pay at the rate of time and one-half for working on February 24, 1968.

Rule 41 of the effective Agreement provides as follows:

## **"HOLIDAY WORK**

Work performed on the following legal holidays, namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half.

When a regularly assigned employee on a position described in Paragraph (d) of Rule 35 has an assigned relief day other than Sunday, and one of the holidays specified in this rule falls on such relief day, the following assigned day will be considered his holiday."

The Carrier, for its part, contends that Article III of the December 28, 1967 Agreement supersedes the second paragraph of Rule 41.

## **"ARTICLE III—HOLIDAYS**

Insofar as applicable to the employees covered by this agreement, effective January 1, 1968, Article II of the Agreement of August 21, 1954, is hereby further amended in the following respects:

Section 1. Section 1 of Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, is hereby amended to read as follows:

Section 1. Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays:

New Year's Day  
Washington's Birthday  
Decoration Day  
Fourth of July  
Labor Day  
Thanksgiving Day  
Christmas

(a) Holiday pay for regularly assigned employees shall be at the pro rata rate of the position to which assigned.

(b) For other than regularly assigned employees, if the holiday falls on a day on which he would otherwise be assigned to work, he shall, if consistent with the requirements of the service, be given the day off and receive eight hours' pay at pro rata rate of the position which he otherwise would have worked. If the holiday falls on a day other than a day on which he otherwise would have worked, he shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him prior to the holiday.

(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph (b) above, 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.

(d) 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."

In our view, Article III did not supersede Rule 41 of the effective Agreement for monthly rated employees on a 7 day assignment. See Award 8541. However, under the applicable provisions of the Agreement, the Claimant is only entitled to the difference between the straight time paid and time and one-half for the work performed on February 24, 1968. Therefore, the claim will be allowed only to that extent.

We would add one further note. Our analysis indicates that Article III, Section 1 of the December 28, 1967 Agreement is applicable to hourly and daily rated employees and not to monthly rated employees. Despite the Carrier's insistence that the August 21, 1954 Agreement granted pay for 56 hours, equivalent to 7 holidays to monthly rated employees, it continued to apply Rule 41 of the effective Agreement without deviation. Thus, we find no basis to support the Carrier's contention.

**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.

**A W A R D**

Claim sustained to extent of difference between straight time paid and time and one-half for work performed on February 24, 1968.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1969.