



Award Number 17831

Docket Number TE-18098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**PENN CENTRAL COMPANY (THE NEW YORK,
NEW HAVEN AND HARTFORD RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven & Hartford Railroad Company, that:

1. Carrier violated the provisions of the agreement when it failed to properly compensate Mr. Logue for working his Holiday, July 4, 1967. Mr. Logue was paid eight hours at the time and one-half rate, also eight hours at the straight time rate of the position of Operator-Clerk at Waterbury, Connecticut, then the eight hours at pro rata was subsequently deducted from his wages on August 12, 1967.
2. Carrier shall now compensate Mr. Logue for eight (8) hours at the pro rata rate of the position at Waterbury, Connecticut.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties effective September 1, 1949, as amended and supplemented is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The cause for this claim arose when Carrier arbitrarily deducted an alleged overpayment for eight hours at the pro rata rate from the earnings of claimant. This representing eight hours Holiday pay for July 4, 1967.

(b) THE ISSUE

Holiday pay.

(c) FACTS

The Claimant was an extra telegrapher at the time this incident arose. On Thursday June 29, 1967 Carrier unilaterally assigned Claimant to a temporary vacancy (hold down) in Relief Position No. 9. On the following day, June 30th, he notified Carrier's Chief Train Dispatcher (his supervising

regular employee must cover that position on the day preceding and the day following the holiday. Since Mr. Logue posted the day before the holiday and posting is not considered as work under the forty hour work week rule, he consequently did not qualify for holiday pay and the claim was denied.

Attached in exhibit form is copy of pertinent correspondence as follows:

"A"—Assistant General Chairman's appeal.

"B"—Carrier's final decision.

Copy of Agreement dated September 1, 1949, as amended, between the parties is on file with your Board and is, by reference, made a part of this Submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was a spare, or extra, telegrapher assigned to work in the place of a regular rest day relief employee who is assigned at Waterbury, Connecticut, as follows:

Saturday—Operator Clerk, First Trick;
Sunday and Monday—Ticket Agent, First Trick;
Tuesday and Wednesday—Operator-Clerk, Second Trick;
Thursday and Friday—Rest Days.

Claimant worked the assignment on Saturday, July 1, 1967. However, he was not qualified to work the Ticket Agent position at Waterbury, and spent Sunday and Monday, July 2 and 3, posting on that position for which he was properly compensated. On Tuesday and Wednesday, July 4 and 5, he worked the assignment as scheduled.

For July 4, the Independence Day holiday, he was paid at the time and one-half rate for working, and also a day's pay at pro rata as holiday pay. Later, however, this latter payment was declared by the Carrier to have been made in error and was deducted from subsequent earnings. The claim before us asks that Carrier be required to restore the payment that it deducted, on the ground that Claimant was in fact entitled to the holiday pay as originally made.

Under the applicable rules an extra employee who is taking the place of an absent regular employee must qualify for holiday pay in the same manner as the regular employee. This qualification, so far as applicable here, is stated in the agreement as follows:

"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. . . ."

Carrier contends that this means the employee must work on the workdays immediately preceding and following the holiday, and that "posting" is not "work". From this premise it concludes that Claimant did not qualify because he did not "work" on the day preceding the holiday.

Both parties apparently believe the issue presented by this dispute to be the question of whether "posting" is "work". That question was resolved for these parties in our recent Award 17745, holding that "posting" by an extra employee is "work" within the meaning of Article 13(d). Such holding would require rejection of the Carrier's contention here.

However, it is apparent that the dispute arose from Carrier's misunderstanding the connotation of the language quoted above. In order to qualify for holiday payment under this provision, compensation paid by the Carrier must be credited to the workdays immediately preceding and following the holiday. There is no requirement that the employee must "work" on those days. See Awards 14501, 14674, 14816, 15467, 16983.

Since compensation paid the Claimant by the Carrier was credited to the work days immediately preceding and following the holiday, Claimant qualified for the holiday pay in accordance with the Agreement. The claim must 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 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.