

Award No. 18330
Docket No. CL-18556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6726) that

a. Carrier violated the rules of the Clerks Agreement when it failed to properly compensate Clerks L. K. Logsdon, R. C. Twigg, M. R. Grimm and Crew Dispatcher P. E. Eichelberger for services performed on dates listed herein below and that

b. Clerks L. K. Logsdon, R. C. Twigg shall now receive eight (8) hours pay at the time and one-half rate for September 3, 1968 and that Clerk M. R. Grimm shall now receive eight (8) hours pay at the time and one-half rate for September 4, 1968 and that Crew Dispatcher P. E. Eichelberger shall now receive eight (8) hours pay at the time and one-half rate for the date of February 24, 1969.

EMPLOYEES' STATEMENT OF FACTS: Claimants Logsdon and Twigg, occupied positions of Yard Clerk at Cumberland, Maryland with assigned rest days of Sunday and Monday. Claimant Grimm was a yard clerk with assigned rest days of Monday and Tuesday. September 2, 1968, a holiday under the agreement, fell on a Monday an assigned rest day for all three claimants (Logsdon, Twigg and Grimm). Claimant Eichelberger occupied the position of Crew Dispatcher at Hagerston with assigned rest days of Saturday and Sunday. February 22, 1969, a holiday under the agreement, fell on Saturday, a rest day of the claimant. All Claimants were paid one day for the holiday in accordance with Article III of the December 28, 1967 National Agreement. Claim is made that the payment of the time and one-half rate should have been made for the first work day following the rest days under the second paragraph of Rule 41. Under the provisions of Rule 41, second paragraph:

"When a regularly assigned employe 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:

"(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."

OPINION OF BOARD: Claimants L. K. Logsdon and R. C. Twigg were regularly assigned as Yard Clerks, Cumberland, Maryland, with work weeks Tuesday through Saturday; Sunday and Monday rest days. Claimant M. R. Grimm was regularly assigned as Yard Clerk, at the same location, Wednesday through Sunday; Monday and Tuesday rest days. September 2, 1968, Labor Day a holiday under the Agreement, fell on the Monday rest day of all three Claimants.

Claimant P. E. Eichelberger was assigned as Crew Dispatcher, Hagerstown, Maryland, with a work week Monday through Friday; Saturday and Sunday rest days. Washington's Birthday, February 22, 1969, a holiday under the Agreement, fell on a Saturday, a rest day of Claimant.

All of the Claimants, which are hourly or daily rated, were paid one day for the holiday which fell on their rest day.

Claim is made of each Claimant for payment of time and one-half for work performed on the first regularly assigned work day following the holiday which fell on their rest day. Rule 41 is cited in support. It reads:

**"HOLIDAY WORK
Rule 41**

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 at the rate of time and one-half.

When a regularly assigned employe 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(d) reads:

**"WORK WEEK
Rule 35**

(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."

It is undisputed that each Claimant was regularly assigned to a seven day position and as to each of them the holiday involved fell on his regularly assigned rest day other than Sunday.

The position of Carrier is that the second paragraph of Rule 41, *supra*, as it relates to hourly and daily rated employes, has been superseded by Article III of the National Agreement dated December 28, 1967, which amended the holiday provisions of Article II of the National Agreement dated August 21, 1954.

Carrier also cited the birthday-holiday provisions of the National Agreement of November 20, 1964. Those provisions are peculiarly applicable only to birthday-holidays. Consequently they are neither material nor relevant in the resolution of the issue raised in the instant case. See and compare Second Division Award No. 5981.

Under the following provision of the August 21, 1954 Agreement regularly assigned hourly and daily rated employee received no holiday pay for an enumerated holiday when it did not fall on a workday of his work week:

ARTICLE II - HOLIDAYS

Section 1. Effective May 1, 1954, 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 work week of the individual employee: (Emphasis ours.)

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

Therefore, under that Agreement an employee in the status prescribed in the quoted provision did not receive compensation for a holiday which fell on his regularly assigned rest day if he did not otherwise work on that day. This resulted in an inequity in that a regularly assigned employee through the coincidence of a holiday falling on one of his regularly assigned rest days was deprived of the holiday benefits. The parties cured this by providing in Article III of the National Agreement of December 28, 1967:

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 rate for each of the following enumerated holidays:

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

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

Under this provision holiday pay attaches, unequivocally, to each enumerated holiday without regard as to whether it is a regularly assigned work day. (NOTE: Claimants herein meet "the qualifying requirements.") Thus on a designated holiday falling on a rest day an employee now enjoys with certainty the objectives of a day off with pay; co-existing objectives which were lacking under the August 21, 1954 National Agreement.

Inasmuch as the National Agreement dated December 28, 1967 — which was entered into subsequent to Rule 41 — firmly fixes an employee's holidays and holiday compensation, we find that it prevails over the conditional prescription in the second paragraph of Rule 41, *supra*. We, therefore, deny the Claim.

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

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1970.

LABOR MEMBER'S DISSENT TO AWARD 18330 (DOCKET CL-18556)

The Referee and Carrier Members gravely erred in adopting the decision rendered by the Referee in this dispute.

There is not one rule in this industry under the Clerk's Agreement - anywhere, on any Carrier - which permits Carrier to work a regularly assigned employee on a Holiday and compensate him therefor at the straight-time rate of pay.

The Referee holds in this Award that Article III of the December 28, 1967 National Agreement supersedes the second paragraph of Rule 41 of this Agreement. Nothing could be further from the fact. The one and only objective of said Article III was to place the hourly - and daily-rated employees on a par with monthly-rated employees with respect to paid holidays. That being the case, the hourly - and daily-rated employees receive eight (8) hours' pay for the holiday - just as the monthly-rated employees do. When a monthly-rated employee is required to work on a holiday, he is paid for such work at the rate of time and one-half. Such payment should also have been applied to the Claimants in this dispute.

The so-called "shifting holiday" provision for incumbents of 7-day positions (Rule 41, second paragraph) is in full force and effect and, regardless

of the erroneous decision in this Award, will remain so until changed in accordance with the Railway Labor Act.

Award 17355, involving the same issue between the same parties, was a precedent Award which the Referee refused to consider and follow in making this erroneous decision.

In the opinion of the undersigned, in order to keep this ill-founded decision from snowballing in the industry, the Referee should admit to his error in judgment.

I dissent.

C. E. Kief
C. E. Kief, Labor Member
1/7/71