

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21407
Docket Number CL-21127

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-7842**) that:

Claim No. 1

1. Carrier violated the Agreement between the parties when on Monday, September 1, 1974, Labor Day, it did not **properly** compensate the following Dispatchers for working this legal holiday: R. B. Orange, Jr., L. D. Gregory, R. H. Gregory, **H. R. Geiger**, N.W. **Baughan** and F.F. Cansler.

2. The Carrier shall **now** be required to properly compensate the above-named Dispatchers for the date of September 2, 1974, Labor Day, of an additional eight (8) hours at the time and one-half rate of pay to be based on the applicable Dispatcher's rate of pay attached to the position they worked on this date.

Claim No. 2

1. Carrier violated rules of the current Clerk-Telegrapher Agreement when Dispatchers J. W. Oliver, C.F. Steele and D. P. Chapman worked on holiday at **straight time** rate of the dispatcher position and should have been compensated at the time and one-half rate of the position for the holiday.

2. Dispatchers J.W. Oliver, C. F. Steele and D. P. Chapman shall now be compensated-eight (8) hours at the time and one-half rate of the position worked on January 1, 1974, at the monthly rate of **\$1,280.33.**

Claim No. 3

1. Carrier violated the Agreement between the parties when it did not properly compensate the following Dispatchers F.F. Cansler, H.W. Gatling, N.W. **Baughan**, R. H. Gregory, A.E. Wood and B.A. Tyler for working Good Friday, April 12, 1974, a legal holiday.

2. Carrier shall **now** be required to properly compensate the above-named dispatchers for the date of April 12, 1974, Good Friday, for an additional eight (8) hours at the time and one-half rate of pay to be based on the applicable Dispatcher's rate of pay attached to the positions at **Crewe**, Virginia.

Claim No. 4

1 . Carrier violated the Agreement between the parties when on Monday, May 27, 1974, Memorial Day, and Thursday, July 4, 1974, Independence Day it did not properly compensate the following Dispatchers for working these holidays: Monday, May 27, 1974, Memorial Day, H. R. Geiger, R. B. Orange, S. G. Mann, R. H. Gregory, F. F. **Cansler** and H. W. Gatling. Thursday, July 4, 1974, Independence Day, S. G. Mann, W. W. **Marsden**, H. R. Geiger, R. H. Gregory, N. W. **Baughan** and H. A. Tyler.

2. Carrier shall now be required to properly compensate the abve-named Dispatchers for the dates of Monday, May 27, 1974, and Thursday, July 4, 1974, for an additional eight (8) hours at the time and **one-** half rate of pay to be based on the applicable Dispatcher's rate of pay attached to the positions they worked on these dates, eight (8) hours for each date of each violation.

OPINION OF BOARD: **This** dispute involves twenty-one (21) claims of monthly-rated train dispatchers for additional pay for working on four (4) legal holidays during 1974. Norfolk and Western train dispatchers working in Carrier's Atlantic and Pocahontas Regions are represented by **BRAC** and are included within the master agreement between N&W and BRAC effective April 1, 1973.

Rule 40 of the parties' agreement is titled "Holiday Pay" and follows, with minor change not here critical, the Clerks' National Holiday Agreement first **adopted** on **August** 21, 1954 and mended seven (7) times thereafter. Rule 40 provides **two** methods of payment of holiday pay, one for hourly- and daily-rated **employees** and another for **monthly-rated employees**.

Monthly-rated employees do not receive extra holiday pay. per se. for **holidays** that occur **during** their workweeks - sufficient additional hours have been added to their monthly rates to **cover** this. Thus, in practice, **monthly-rated** employees receive one-twelfth (**1/12**) of the total of their annual holiday pay each month. Accordingly, in a month in which no holidays occur, a monthly-rated **employee** who works all assigned workdays receives his full monthly rate. In months in which holidays do occur and the **employee** works all his assigned workdays except the holiday, he also receives his full monthly rate.

The monthly-rated train dispatchers involved herein were required to work eight (8) hours on the four (4) named holidays in 1974. Such service is **covered** by Rule 39 of the April 1, 1973 Agreement. Rule 39 requires that work performed on legal holidays shall be paid for at the rate of time and one-half. In the application of this mle monthly-rated employees are to be paid time and one-half for service performed on legal holidays in addition to their monthly rates. (Award 17225 - Criswell.)

The record before this Board is not clear as to precisely what amounts claimants were paid on the four (4) holidays involved. One **reading** lends itself to a conclusion that monthly-rated dispatchers did not receive any additional compensation for work performed on the holidays; another lends itself to the conclusion that **dispatchers** received eight (8) hours' straight-time pay as additional compensation for the work performed on the holidays. This, coupled with the fact that while the claims were pending **on** the property Carrier paid **each** claimant an additional four (4) hours' pay, compounds the confusion in the record.

Under these circumstances we will r-d the case to the parties with the directive that payroll records be examined to determine precisely what amounts claimants were paid, and if any claimant did not receive eight (8) hours' pay at time and one-half rates for work performed on the holidays involved in addition to his regular pay as produced by his monthly rate, such claimants shall have appropriate adjustments made.

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 dispute should be **remanded** to the parties for settlement on the property.

A W A R D

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.