Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32418
Docket No. CL-32139
98-3-94-3-557

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago, Central & Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11105) that:

(1) Carrier violated the Agreement when it arbitrarily changed the days recognized as holidays for the Christmas 1993 and New Year's Day 1994 after seeking, and failing to obtain, agreement with the Union to change such days;

(2) Carrier shall now compensate Clerks L. M. Cowles, D. M. Townsend, K. E. Broell, J. F. Guess, D. F. Goldsberry, G. A. Ott, D. A. Savage, J. M. Dean, E. F. Poers, G. A. Zolecki, S. B. Harrison and R. C. Ritchie, eight (8) hours' pay each for each of dates December 25, 1993 and January 1, 1994."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Rule 6(b) provides for a 40 hour workweek. Subject to qualifying requirements (e.g., working on the workday before or after the holiday or being available for service if not assigned work), Rule 32 provides that "each employee shall receive eight hours' pay at the pro rata rate for . . . the . . . enumerated holidays." Christmas Eve, Christmas Day and New Year's Day are designated holidays under Rule 32. Rule 18 requires bulletined jobs to state assigned rest days.

In 1993, Christmas Eve fell on a Friday with Christmas and New Year's Day 1994 falling on Saturdays. By letter dated November 24, 1993, the Carrier proposed to the Organization that "[i]f a person's rest day is on Friday or Saturday, they could extend their holiday week-end in lieu of the extra pay . . . if we can blank their position." The Carrier reiterated that proposal by letter dated December 10, 1993 stating that "[n]umerous Clerks . . . have approached the Company with the request that we allow some flexibility when applying the Holiday Rule" and offering "that on Christmas Eve and Christmas Day, in lieu of the extra day's pay, they can take either Thursday, December 23, 1993 or Monday, December 27, 1993 off" and that "[o]n New Years Day, 1994, in lieu of the extra day's pay, they can take either Friday December 31, 1993 or Monday January 3, 1994 off." By letter dated December 13, 1993, the Organization rejected the Carrier's proposal.

Notwithstanding the Organization's rejection of the Carrier's proposal, for Christmas the Carrier permitted employees to take off without pay on December 23 or 27, 1993, but still paid those employees holiday pay. Similarly, in conjunction with New Year's Day, the Carrier permitted employees to take off without pay on December 31, 1993 or January 3, 1994, but paid employees for holiday pay for New Year's Day. The instant claim followed.

The Organization argues that the Carrier's actions amounted to a unilateral change of the Agreement. The Carrier asserts that it merely allowed employees to lay off during the week and waived its ability to decline to pay them holiday pay because they did not meet the qualifications under Rule 32.

The Organization's position has merit. By designating what otherwise would have been a workday as a day off without pay, the Carrier effectively changed the

workweek and days off of bulletined positions in violation of Rules 6 and 18, or changed the observance date of designated holidays set forth in Rule 32.

The fact that the Carrier asserts that it merely "accommodated the request of its clerical employees" does not change the result. The Carrier effectively changed the terms of Rules 6, 18 and 32 of the Agreement without consent of the Organization. The Organization is the exclusive bargaining representative of the employees. The Carrier cannot bypass the Organization (especially after it sought but failed to obtain the Organization's concurrence) and deal directly with the employees in an effort to change the terms of the Agreement. Third Division Awards 12712 ("... rights established by a collective agreement cannot be bartered away by an individual beneficiary covered by it"); 13960 ("[i]t has been firmly established in opinions of the Supreme Court that an individual employe in a collective bargaining unit may not by agreement with the employer derogate the terms of the collective bargaining agreement").

Nor can the Carrier argue that it merely opted to blank the positions for a day before or after the designated holidays. The clear design of the Carrier's actions was to circumvent the provisions of Rules 6, 18 and 32. That is not a legitimate basis for the blanking of positions.

A past practice argument also does not change the result. Aside from the fact that the Agreement language is clear and past practice cannot change clear language, here the Carrier sought but did not receive the Organization's concurrence in its actions. The Carrier cannot argue that it was lulled into thinking that its actions were permissible.

The result of changing the days off or the scheduled observance days of the holidays is that the employees were harmed and lost eight hours' pay for each of the two holidays. Claimants shall therefore be made whole in accord with the rate specified in the Agreement.

The Carrier has taken exception to the claims of several Claimants arguing that they were correctly paid under any scenario because of vacation, personal leave or the like during the period covered by the claim. In light of our decision, with respect to those individuals, the parties are directed to determine whether their particular circumstances would warrant compensation had the Carrier followed the provisions of the Agreement. Further, no employee shall receive double compensation as a result of

multiple claims. In this regard, we note, for example, that Claimant A. Savage was also a named Claimant in Third Division Award 32417.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.