

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

DISPUTE.—

"Claim of the following Yard Clerks employed at East Cambridge for one day's pay at their regular rate for each of the holidays specified on which they were not required to work by the Carrier:

"F. H. Feitel: One day, December 25, 1934; one day January 1, 1935; one day February 22, 1935; and one day April 19, 1935. Total four days.

"G. P. Ward: One day, January 1, 1935. Total one day.

"William Dolan: One day, December 25, 1934, and one day January 1, 1935. Total two days."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

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

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

The parties have jointly certified the following statement of facts, and the Third Division so finds:

"Prior to December 25, 1934, G. P. Ward, F. H. Feitel, and William Dolan, employed as Yard Clerks at East Cambridge, were paid their regular day's pay for every holiday on which they were not required by the Carrier to work. Effective with the holiday December 25, 1934, this method of payment was discontinued and thereafter these clerks were not paid for holidays not worked when the holiday was their regular assigned day of rest."

There is in evidence an agreement between the parties bearing effective date of July 15, 1925. Rule 62 thereof provides:

"Employees enumerated in Sections 1 and 2 of Rule 1 (clerical employees among others) shall be paid for holidays not worked -----."

The Carrier contends that this provision of the rule does not apply when the day of relief of an employee (seventh day) falls on a holiday.

This rule is explicit, clear on its face, and contains no exceptions. It must, therefore, be literally applied. The effect will be to give to the employees in question seven days' wages for six days' work. This is a result which if the parties had thought about it in the negotiation of their Agreement would doubtless have been avoided by express language. But there is no evidence that the parties thought about the matter. The contingency of the assigned day of rest falling on a holiday was shown by the Carrier's evidence to have been of rare occurrence. Its very rarity probably accounts for the failure to provide for it in the Agreement.

An analogous question was disposed of by the United States Railroad Labor Board in Decision 3631, Docket 3538. The Agreement there in question provided

that where a holiday fell on a Sunday the day observed by the State, Nation, or by proclamation should be considered the holiday, and that work performed on such day should be paid at the rate of time and one-half. An employe was assigned to work six days a week with Wednesday as his day of rest. Decoration Day fell on a Wednesday and he claimed payment for Thursday's work at the rate of time and one-half on the theory that Wednesday was in effect his Sunday and that he should, therefore, come under the rule. The rule, however, spoke only of Sunday and not of a week-day assigned in lieu thereof. The Board applied the rule literally and denied the employe's claim. The employe thus received less wages than other employes who also worked six days a week but who were fortunate enough to have Sundays as their rest days. This was a result, which if the parties had thought about it, would doubtless have been avoided by express language. The parties evidently had not thought about the contingency and the Board had no recourse but to apply the Agreement as written.

The same result must obtain in this case.

AWARD

Claim sustained.

By Order of Third Division :

Attest :

NATIONAL RAILROAD ADJUSTMENT BOARD.

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of March 1936.