

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad for the loss of a day's pay in each instance assigned employees covered by the Telegraphers' Agreement were denied the right to work their assigned jobs on Monday following Decoration Day 1937, 4th of July 1937, Christmas Day 1938, and New Year's Day 1939, which fell on Sunday, and in violation of Rule No. 15 of the Telegraphers' Agreement, Guarantee Rule included in the Memorandum of Agreement dated August 3, 1934, and Interpretation of said Memorandum dated June 20, 1936."

EMPLOYEES' STATEMENT OF FACTS: "Decoration Day 1937, 4th of July 1937, Christmas Day 1938, and New Year's Day 1939, fell on Sunday. The Management notified and instructed the employees just prior to the Holidays which fell on Sunday to observe the following day (Monday) in addition to the Holidays which fell on Sundays, which deprived them of a full day's work and pay therefor, account such instructions being issued by the Management.

"In each of the instances involved the employees did not work a full day and in most instances did not work at all on the Sunday on which the Holiday fell, nor did they work a full day and in most instances did not work at all on the following day (Monday) because of the instructions issued by the Management which deprived them of the privilege of doing so. When permitted to work a part of the day Monday following the Holiday which fell on Sunday the employees were paid for the time worked only, and when not permitted to work at all on Monday following the Holiday which fell on Sunday they received no pay whatever for the day."

CARRIER'S STATEMENT OF FACTS: "Decoration Day in 1937, Fourth of July 1937, Christmas Day in 1938, and New Year's Day in 1939, fell on Sundays. Because of the fact the holiday fell on Sunday, Monday following was observed as the holiday nationally on dates above enumerated. Some employees were not worked at all and some a portion of the time and others full time, and paid in accordance with schedule agreement covering Sunday and holiday service, employees having been notified by bulletin or otherwise prior to the Monday following regular holiday, hours they would work."

An Agreement bearing date of February 16, 1929, revised as per Memorandum of Agreement dated August 3, 1934, is in effect between the parties.

only with the question as to what constitutes such holidays. Holidays are designated by law or by proclamation. The statute of the State of Illinois (Revised Statutes 1937, Chapter 98, Section 18) covering this question, reads as follows:

'When any such holiday falls on Sunday, the Monday next following shall be held and considered such holiday.'

"The statute of the State of Missouri (Revised Statutes of Missouri 1929, Chapter 127, Section 14222) reads as follows:

'When any such holiday falls on Sunday, the Monday next following shall be considered such holiday.'

"Since the holidays in dispute are fixed by law and the Illinois and Missouri statutes rule that when any of these holidays fall on Sundays, the Monday following becomes the holiday by law, it is the position of the Carrier that the Monday so observed becomes in fact the holiday named in Rule No. 15. Since these statutes designate the Mondays referred to as being in fact the holidays stated in Rule No. 15, the Carrier is without any authority to assert that the Sundays, instead of Mondays, constituted such holidays, and if the positions of the Carrier and the Employees were reversed, and the Employees were claiming Monday as a holiday, because so fixed by law, the Carrier would be compelled to admit that the weight of evidence would all be on the side of the Employees and would expect their claim to be sustained.

"It is plain that this interpretation of the Sunday and holiday rule in their schedule has been accepted by the Employees, as the practice of so observing such holidays that fall on Sundays has been in effect prior to any agreement with the Telegraphers or the adoption of any Sunday and holiday rule in such agreement, and continued without protest, complaint or claim until protest addressed to the Superintendents by General Chairman, E. E. Gentz, dated May 28, 1937, having reference to bulletin to agents, telegraphers and towermen, advising them that Monday, May 31, 1937, would be observed as Decoration Day, and that Sunday hours by such employees would be worked on that day.

"Attention is called to the underlining in the Carrier's quotation of Rule No. 15, above. It will be observed that the stipulation is that the pro rata hourly rate will be paid when the entire number of hours constituting the regular week-day assignment is worked. The third paragraph of the rule fixes the compensation where less than the full day's assignment is worked. The Employees are paid according to this rule. Such of them as perform no service on these holidays are not paid, and those whose Sunday and holiday assignment provides for a call on such days are paid for the call at overtime rates.

"There is nothing in this rule that requires the Carrier to work employees on holidays. On the contrary, the rule indicates the intention that telegraphers will be excused from holiday service, and the rule also plainly indicates that when so excused, they will not be paid for the day unless used.

"It is the position of the Carrier that the claim of the Employees is without merit and should be declined."

OPINION OF BOARD: Decoration Day 1937, Fourth of July 1937, Christmas Day 1938 and New Year's Day 1939 fell on Sunday. The Management notified the employees prior to the days in question that Monday would be observed as the holiday and such of the Employees as were required to work on that day would be paid in accordance with Rule 15 of the Agreement covering Sunday and holiday service. Some of the employees were not worked at all and received no pay, while others were worked a part of the day and were paid accordingly. The claim is for a full day's pay on each of the days involved for all employees affected.

The prevailing agreement between the parties became effective February 16, 1929. Certain supplemental modifications have been made, some of which will be referred to later. Rule 15, as incorporated in the Agreement in 1929 reads as follows:

"Telegraphers will be excused from Sunday service whenever possible without detriment to the service.

"Time worked on Sundays and the following holidays: New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas shall be paid for at the pro rata hourly rate when the entire number of hours constituting the regular week day assignment are worked.

"When notified or called to work on Sundays and the above specified holidays, a less number of hours than constitute a day's work within the limits of the regular week day assignment, employees shall be paid a minimum allowance of two hours at overtime rate for two hours work or less and at the pro rata hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with Rule No. 3."

When the agreement was executed it contained no guarantee rule which permitted Carrier to lay off employees on days when their services were not needed. In August, 1934, the parties entered into a supplemental agreement which included, among other things, a guarantee rule and which suspended Rule 15 governing Sunday and holiday service. These provisions of the Supplemental Agreement are set out below:

"Regularly assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied, or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours, as per location, except on relief days."

"During the operation of this six-day week plan, rules governing Sunday and holiday service are hereby suspended."

By an Agreement dated June 20, 1936, Rule 15 was restored to the agreement "with the exception that those occupying six day per week positions created by the agreement may be relieved on week days."

Petitioner contends that under the provisions of Rule 15 Carrier did not have the right to deprive the employees of a full day's work on the four Mondays following the holidays which fell on Sundays. This contention is based largely on the fact that many other similar agreements, including some with this Carrier contain a proviso that:

"When any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday."

This language was incorporated in the Sunday and holiday rule by U. S. Labor Board Decision 757 issued March 3, 1922. The Alton Railroad was not a party to this case.

The record shows that Rule 15 has been in effect on this Carrier since October 1, 1918 and that during all this period it has been the practice to observe Monday as a holiday when any of the holidays specified in the rule fell on Sunday. The proviso quoted above was promulgated after Rule 15 first became effective and as it merely confirmed the practice already in effect on this Carrier, there was no apparent need to incorporate it in the rule as it could add nothing thereto or take nothing therefrom. When the "Guarantee Rule" became effective on this property the duty rested

upon the party that desired to make it applicable to any holidays as then observed to see to it that such holidays were not excepted therefrom. Then was the time to speak if a change in the prevailing practice under the rule was desired.

Moreover, legal holidays exist only through some statutory enactment. The States of Illinois and Missouri, in which this Carrier operates, makes Monday the legal holiday when any of the days named in Rule 15 fall on Sunday. Therefore, in each case Monday was the legal holiday, and it is the opinion of the Board that in the absence of a Federal Statute to the contrary, (and there is none) the day fixed by the Statutes of the States through which this Carrier operates constitutes the holidays to be observed. The Board holds that in each instance Monday was the holiday specified in Rule 15.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of September, 1939.