

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Baltimore and Ohio Railroad, that all employes coming within the scope of the Telegraphers' Agreement working regular positions who were required by the carrier to suspend work on Monday, July 5, 1937, Monday, December 26, 1938, and Monday, January 2, 1939, contrary to the provisions of Article 11-(a) of said agreement and contrary to Carrier's Circular Letter No. 253 of February 25, 1935, to all Superintendents, also Carrier's letter to the General Chairman of the Telegraphers' Committee, dated April 19, 1935, be allowed a full day's pay at pro rata rate for each of the above dates relieved."

STATEMENT OF FACTS: The parties jointly certified the following statement of facts.

"As a result of instructions issued by the Railroad Company to various station agents, telegraphers and other employes covered by the Telegraphers' wage agreement not to report for duty on July 5, 1937, December 26, 1938, and January 2, 1939, (which dates fell on Monday), certain employes so instructed were relieved on one or more of these dates in addition to July 4, 1937, December 25, 1938, and January 1, 1939, which dates fell on Sunday."

An agreement bearing date of May 16, 1938, as to rates of pay, and July 1, 1928, as to rules, is in effect between the parties.

POSITION OF EMPLOYES: "The Telegraphers' Agreement bearing effective date of May 16, 1938, as to wages and July 1, 1928, as to rules, and supplements thereto, governs in this dispute.

"Article 10, Paragraph E, of said Agreement provides that:

'Employes will not be required to suspend work during regular hours or to absorb overtime.'

"Article 11 provides as follows:

'(a) When employes are required to work on Sundays and or the following holidays: New Year's, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas, they will be so advised on the preceding day.

'(b) Time worked on Sundays and or the holidays specified in the preceding paragraph shall be paid for at the pro rata hourly rate when the entire number of hours constituting the regular week-day assignment are worked.

POSITION OF CARRIER: "On June 25, 1937, instructions were issued to all agents on the Baltimore Division to the effect that if they did not handle United States mail they would not work on July 5, 1937, this being a legal holiday, 'Independence Day,' and one of the seven specified in the Telegraphers' Agreement. It had been the practice for years to issue similar instructions to all agents prior to any of the seven holidays covered by the agreement.

"It is recognized in the application of the rules of all other agreements with railroad employes that a legal holiday falling on Sunday is celebrated on the day following and is recognized as the legal holiday and in agreements that provide for the payment of punitive rates for Sundays and holidays the days following a holiday that falls on Sunday is recognized as the legal holiday and punitive rates are allowed for service performed on such days. While it is true the Telegraphers' Agreement specifies the seven legal holidays, no mention is made that the day following legal holiday when it falls on Sunday is to be considered the actual holiday. However, as above stated the application of the holiday rule, as above outlined, has been in effect on this railroad many years and without exception being taken by the Telegraphers' Committee until recently.

"Article 11, Paragraphs (a), (b) and (c) provide:

'(a) When employes are required to work on Sundays and or the following holidays: New Year's Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas, they will be so advised on the preceding day.

'(b) Time worked on Sundays and or the holidays specified in the preceding paragraph shall be paid for at the pro rata hourly rate when the entire number of hours constituting the regular week-day assignment are worked.

'(c) When notified or called to work on Sundays and or the holidays specified in paragraph (a), a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employes 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 paragraphs (b) and (d) of Article 10 of this agreement.'

"It will be noted Paragraph (a) provides that employes will be advised on the date preceding a holiday if they are to be used on such day and when worked full time within the hours of their regular assignment pro rata rates are paid and if worked less than the regular number of hours they are allowed two hours at overtime rates for two hours work or less and pro rata rates thereafter.

"The same practice with respect to a holiday in the application of the above rule is the same as applied to the Sunday and Holiday rules of all other agreements, in that the day following the legal holiday when it falls on Sunday is recognized as the holiday so far as the application of all rules applying to Sunday and Holiday service is concerned.

"In view of the past practice on this railroad for many years in the application of Rule 11 without complaint from the committee until recent claim, we submit there is no ground to support the technical application of the rule, as contended by the committee, and respectfully request your Honorable Board to deny the claim."

OPINION OF BOARD: The question presented by the dispute in this case is the same as that involved in Docket TE-940, Award No. 945, and the opinion in that case is equally applicable here. The claim will be denied.

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 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 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 27th day of September, 1939.