

Award No. 2725
Docket No. SG-2814

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim for one day's pay for Messrs. E. M. Hulsey, T. O. Culpepper, H. N. Rominger, et al., who, by direction of the management, were not permitted to work on July 5, 1943, which was one of their regularly assigned work days under the proper application of agreement rules.

EMPLOYEES' STATEMENT OF FACTS: Signal Department employes, under the jurisdiction of Signal Supervisor R. T. Sewell, in the State of Georgia, were advised that Monday, July 5, 1943, would be observed by the management in lieu of Sunday, July 4, 1943, and that no work would be required of the employes on July 5th. However, July 4, 1943 was proclaimed by the Governor of the State of Georgia as a legal holiday. Consequently, Monday, July 5, 1943 was not a legal holiday.

CARRIER'S STATEMENT OF FACTS: (1) Named claimants were employed as signal maintainers on respondent's Charlotte Division, in the State of Georgia, on July 5th, 1943; there was an Assistant Maintainer assigned to each Maintainer's territory.

(2) July 4, 1943 fell on Sunday.

(3) There was no proclamation, State or National, proclaiming July 5th, Monday, as the day to be observed as the holiday, but this day was observed, generally, throughout the nation as the holiday.

(4) Monday, July 5th, was observed as the holiday by employes of Southern Railway Company and associated railroads, covered by other collective bargaining agreements, in Georgia and other States.

(5) Some employes in the Signal Department, employed on other Divisions of the railroad in the State of Georgia, worked on July 5th and were paid therefor at pro rata rates, as a result of their own initiative.

(6) The governing provision of the current agreement, effective April 1, 1942, is Rule 24 (a).

POSITION OF EMPLOYEES: There is an agreement between the parties, effective April 1, 1942, which, among other things, provides:

"Sunday and holidays—Rule 24:

- (a) Sunday and holiday work full day period. For service performed on Sundays and the following holidays, i. e., New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor

There is also shown, as Carrier's Exhibit 9, a photostatic copy of a part of the first page of the Gainesville News, July 1, 1943, a weekly newspaper serving this territory. It will be noted in the first right hand column a heading "All stores to close Monday, observing the Fourth" and in the body of the article the assertion "the entire U. S. will observe the Fourth by closing on Monday." In the first column reproduced on the left, is an account of horse races to be held at the Fair Grounds Monday afternoon, in celebration of the holiday. This newspaper did not print the interview that the Atlanta Journal reported with the Governor. While the Atlanta Journal is one of the Atlanta newspapers relied on by the people of this section for their daily news, it is quite apparent that the reporter's interview with the Governor, as reported in the Journal, had no effect on the observance of the holiday.

Mr. Sewell took the observance of Monday, July 5th, as a holiday so much a matter of course that he was unable to recall two or three months later just what, if any, conversation he had had with the maintainers; he was therefore requested to talk with each of them and get an expression from them as to their recollection of what, if any, conversations transpired with regard to the matter. Mr. Sewell transmitted this information to Mr. Charles, which is reproduced and shown as Carrier's Exhibit 10. These statements speak for themselves. Each of these men regarded Monday, July 5th, as a holiday. They did not ask to be permitted to work, and were not directed to work, and, as the General Chairman has said (see Exhibit 2), it has **always** been the practice to observe Monday as the holiday when the holiday fell on Sunday.

(3) Rule 24 of the current agreement was originally promulgated by the U. S. R. L. B. by decision, dated February 13, 1922. Throughout the years, it has been the custom, when one of the fixed holidays falls on Sunday, to observe the following day as the holiday, a fact attested to by the General Chairman, in his letter of October 7, 1943 (see Carrier's Exhibit 2.)

The Memorandum of Understanding of March 29, 1943 provides that men are not to work on holidays, unless instructed to do so, (except gangmen). If Monday, July 5th, was a holiday, the men were correct in not reporting for work in the absence of any instructions to do so. If it was not a holiday, they owed the duty to report for work, just as on any other work day. The claimants took it as a matter of course, that it was a holiday. Their supervisor did, also.

Other principle railroads, operating in the State of Georgia, and employing Signalmen, represented by the B. R. S. of A.,—A. C. L., L. & N., S. A. L., N. C. & St. L. and Central of Ga.—observed July 5 as the holiday, with respect to this and all other classes of employees.

As to these claimants, respondent applied the agreement in the same manner that similar agreements were applied to employees of other classes and crafts, and in the same manner as other railroads, similarly situated. Hence claimants are not entitled to pay for July 5th, a day on which they did not work.

CARRIER'S CONCLUSION: Your respondent has shown that the agreement contemplated the observance of Monday, July 5th, as the holiday; that the claimants regarded that day as the holiday, and laid their plans accordingly, and, further, that the agreement was properly administered, and claimants are not entitled to pay as claimed, whereupon the claim should be denied.

OPINION OF BOARD: The ultimate question before the Board is, was Monday, July 5, 1943, a holiday within the meaning of Rule 24 of the current Agreement. The pertinent parts of that rule are as follows: "For service performed on Sunday and the following holidays, i. e., * * * Fourth of July * * * (provided if any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday) shall be paid at the rate of time and one-half, except * * *."

Section 14-1809, Code of Georgia, annotated (Acts 1943, pp. 331, 332), makes July the Fourth a legal holiday, but it does not provide that if any of the named legal holidays fall on Sunday, then the following day or the preceding day will be observed as that holiday. The Governor did not issue any proclamation making July 5, 1943, a holiday. But both parties to this dispute agree that it has "been the practice of long standing, the following day had been observed as a holiday for the purpose of agreement."

Rule 24 clearly contemplates that when one of the named holidays fall on Sunday, then some other day will be observed as a holiday, which day will be the day observed by the State, Nation or by proclamation.

A holiday may be created by statute or by proclamation of the Governor of a State or by the President of the United States or it "may be created by general acceptance and observation or observance amounting to a common-law custom." 40 C. I. S. 410-411.

As above stated, it has "been the practice of long standing" to observe the following day as a holiday, when the named holiday falls on Sunday. Under the facts in this record, the Board is of the opinion that July 5, 1943, was a holiday within the meaning of Rule 24.

Under the "Memorandum of Understanding" "Men are not to work on holidays unless instructed to do so." The employees involved in this dispute were not instructed to work on the day in question except E. M. Hulsey who answered a call and was compensated for the call under the call rule.

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 there were no violations of the rules of the Current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.