Award No. 4304

Docket No. TE-4064

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad Company that:

(a) D. J. Pignone, who occupied the agent-operator position at Taylor, Pennsylvania, on February 22, 1947 (Washington's Birthday) shall be paid time and one-half rate for that day,

(b) John J. McCrone, who occupied the first trick position at Cayuga Tower on February 22, 1947 (Washington's Birthday) shall be paid time and one-half rate for that day,

(c) George Rushin, who occupied the third trick position at Scranton Yard on September 1, 1947 (Labor Day) shall be paid time and one-half for that day,

(d) L. J. Dwyer, who occupied the agent-operator position at Janesville, New York, on February 22, 1947 (Washington's Birthday) shall be paid time and one-half rate for that day, and,

(e) Retroactively to March 1, 1945 and currently, any and all extra employes performing service on the following holidays: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any such holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for such service at time and one-half rate with a minimum of eight hours when they occupied or do occupy 7-day positions.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties known as the Telegraphers' Agreement, bearing effective date of May 1, 1940, except Articles 8 and 24, which bear effective date of March 1, 1945, is in evidence, copies thereof are on file with the National Railroad Adjustment Board.

Extra employes Pignone, McCrone, Rushin and Dwyer, respectively, occupied 7-day position at Taylor, February 22, 1947 (Washington's Birthday); Cayuga Tower, February 22, 1947 (Washington's Birthday); Scranton Yard, September 1, 1947 (Labor Day) and Janesville, February 22, 1947 (Washington's Birthday). The Carrier allowed only straight time rate for such service.

Claim should be denied for the following reasons:

1. Extra Operator L. J. Dwyer was correctly compensated for service performed on Saturday, February 22, 1947 under Article 1, Section 1 (b), paragraph 2 of Agreement between the Employes and the Carrier dated November 20, 1946.

2. L. J. Dwyer was not the regular incumbent of Agent Operator's position at Jamesville, N. Y., February 22, 1947. Dwyer was working in the capacity of an extra employe entitled to the work under specific rules calling for straight time compensation in the premises.

3. There are no provisions in the Agreement of November 20, 1946 that changes the status of an extra employe to that of a regular employe.

4. The National Railroad Adjustment Board is without authority to change rules because the Organization has failed in its negotiations with the Carrier to effect such changes.

CLAIM (E)

It follows from the foregoing discussion of specific claims (a), (b), (c) and (d) that claim (e) is also without merit and should be denied. That claim, likewise, is made for "**extra** employes" and it is subject to the same fatal deficiencies inherent in claims (a), (b), (c) and (d), as well as others which will presently appear.

A court would refuse to enforce any such vague claim which, obviously, would require extraneous evidence to establish it in the case of every particular individual.

> Claims that are "vague, uncertain and indefinite" will not even be entertained. **(Award 10250—1st Division.)**

As the court said in **R. R. Yardmasters v. Indiana Harbor Belt R. Co., 70 Fed. Supp. 915,** in dismissing a suit to enforce an award of this Board because the claim was "too vague" to be enforced:

> "Furthermore, **the statement of claim is indefinite.** It does not contain the **names** of the two yardmen over whom the dispute arose. **Extraneous evidence would have to be introduced** to give the award meaning."

CONCLUSION

Under no circumstances should this Board attempt to rewrite the rules presently obtaining.

> "To adopt the practice of **broadening** or **extending** the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employes and carrier. Far better for all concerned is a course of procedure which adheres to the elemental rule leaving parties by **negotiation** or other proper procedure to make certain that which has been uncertain." **(Award 2622—3rd Division.)**

Here there is no uncertainty, and the rules require denial of the claim. The evidence is that the Organization has already attempted to negotiate a change in the rule.

(Exhibits not reproduced.)

OPINION OF BOARD: A Memorandum of Agreement was entered into by the parties on November 20, 1946. Petitioners contend that said Agreement requires that Extra employes who perform services on any of the holidays designated by that Agreement be paid time and one-half rate for such service. The claim is that the Agreement requires premium pay for

work on any of the seven specified holidays, regardless of whether the employe concerned is Regular or Extra; Petitioners stress the claim that Extra employes, as such, who work on any of the holidays, are entitled to time and one-half rate under the Agreement.

This Board must determine the rights under this contract from the four corners of the Agreement. Unless language expressly or impliedly authorizing payment as claimed here can be found in the Agreement itself this Board cannot read into it such a meaning. In Award No. 2491 this Board said:

> "* * * We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employes by the agreement."

In Award 2132 this Board said:

> "* * * it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. * * *"

And in Award 2622 this Board said:

> "* * * Far better for all concerned is a course or procedure which adheres to the elemental rule, leaving it up to the parties by negotiation or other proper procedure to make certain that which has been uncertain."

Section 1 (j) (Seven Day Positions) reads:

> "Any employe occupying a position requiring a Sunday assignment of the regular week day hours required to work on any of the seven (7) holidays specified in this agreement within the hours of his regular week day assignment shall be compensated for such service at the rate of time and one-half with a minimum of eight (8) hours."

The words "his regular week day assignment" refer to employes having such. Extra employes do not have regular week day assignments. Petitioners have been specific in claiming that extra employes are entitled to premium pay for holiday work, and they have admitted that they were Extra employes, that is, employes not holding regular assignments. Corpus Juris (Vol. 3, Page 230) defines the word "any" as follows:

> "A word which may have one of several meanings, according to the subject which it qualifies" and "Like all other general words, the meaning of 'any' is often restrained and limited by the context or subject matter."

Here the word "Any" is qualified by the words "his regular week day assignment". Without the words "his regular week day assignment" it might well be held that "Any" was meant to include "Extra" employes. But if this were the intent of the parties, no additional words would have been needed. The fact that more words were added must have some significance; they cannot be considered as mere surplusage. What is their purpose? The only possible one is to modify or limit the application of the word "Any" to those having a "regular week day assignment". It would have been easy for the parties to say that Extra employes would attain all of the rights of a regularly assigned employ upon working a specified number of consecutive days if the parties had intended such; they did not, however, do so.

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 Carrier has not violated the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1949.