Award No. 5097
Docket No. TE-5076

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND CENTRAL TERMINAL

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers in Grand Central Terminal, that

(a) The Carrier violated the terms of the Telegraphers' Agreement when it blanked six positions located in Signal Stations A, B and U, in Grand Central Terminal, New York City, on Thanksgiving Day, November 24, 1949, and denied employment to the incumbents of these positions.

(b) The Carrier shall now be required to pay claimants Jacobson, Schirick, Donahue, Gee, Schram and Willmore, eight (8) hours at the proper rate of pay applicable to each position on which work was denied to these employes on this day.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1944, is in evidence as well as an amendment effective January 1, 1946, between the parties to this dispute, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Prior to November 24, 1949, the Carrier issued orders to six regularly assigned telegraph schedule employes in Grand Central Terminal, New York City, that they were not to come to work on Thanksgiving Day, Thursday, November 24, 1949, and that their regularly assigned positions would be blanked that day.

The positions declared blanked on this date were as follows:

Employe	Title of Position	Signal Station	Assigned hours and days
I. Jacobson	Asst. Tower Director	"A"	7:10 AM to 3:10 PM Daily
H. A. Schirich	Leverman	"B"	7:45 AM to 3:45 PM Daily except Saturday and Sunday.
J. M. Donahue	Leverman	"B"	3:00 PM to 11:00 PM Daily except Saturday and Sunday.
N. N. Gee	Telegrapher	"B"	7:10 AM to 3:10 PM Daily except Saturday and Sunday.
J. H. Schram	Leverman	"U"	7:25 AM to 3:25 PM Daily
J. X. Willmore	Leverman	"U"	3:25 PM to 11:25 PM Daily

Mr. Woodman did not answer the question, but on November 28, 1949 he presented the claim to the Superintendent, Carrier's Exhibit B.

It is, therefore, apparent that the charges that the Carrier acted unilaterally, arbitrarily and violated the agreement, are ill-founded.

Under Principal Point 1 the Carrier has pointed to the language of Rule 2(e), which provides how employes shall be paid when "required to work" on holidays. That rule became effective on January 1, 1946. Before that time the employes had no Holiday Rule of any kind. This addition to Rule 2 gave them pay at the rate of time and one-half for work performed on a recognized holiday.

It will be noted, however, that the second paragraph of the rule specifically states that the rule "shall not be so applied as to increase payments under Rule 9 for time not worked." This addition to the new holiday provision has an important bearing on this case. It shows that both parties recognized when negotiating the new rule that the Carrier should not be penalized through the incurring of payments for time not worked.

All rules which provide for time and one-half for work performed on holidays are punitive rules and are based on the theory that punitive pay should be allowed for working employes on the holiday. The converse is that employes should not be worked if their positions can be blanked.

It is an accepted principle in all of our agreements with the respective crafts that penalty time is paid for work at times when the employes receiving it are not normally expected to work, and that there is no obligation on the Carrier to provide work for any employe at a time when such work would require payment at penalty rates.

The very fact that the second paragraph was written into new Rule 2(a) demonstrates that parties took these principles into account when they negotiated the Holiday Rule.

The Carrier requests that the Board deny the claim of the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: The parties are in agreement that the six named positions in question were blanked one day, Thanksgiving, November 24, 1949, but they vigorously disagree as to whether these positions had ever been blanked prior to that date. The Organization charges they had not been. The Carrier takes issue. The Carrier could have strengthened its position by stating the occasions and dates of blanking the positions, but since no finding on the controverted question of past practice is considered necessary, for reasons hereinafter stated, we pass on to controlling considerations.

In tracing the history of the contractual relations between the parties we observe that until the agreement, dated February 19, 1946, was negotiated, no written holiday rule was in existence. At that time the parties first agreed on punitive or premium rates of pay for employes required to work on shifts or tours of duty starting on named holidays. It is true that the Board, on the facts and circumstances of given cases, has held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Nevertheless, this does not necessarily mean that the abrogation of past practice must be expressly written into the contract if the intent to do is otherwise clearly ascertainable from the language. In view of the confronting change in the agreement and the dispute over what actually has been the past practice, the Board will concern itself solely with interpreting and construing the rules of agreement as presently written.

We find in this agreement no guaranteed work week as contended for by the Organization. Rule 2 (a) provides a basic work day for the purpose of computing overtime and paragraph (d) of the rule protects the employes against a reduction in hours, by reason of suspension of work during regular hours or to absorb overtime. The rule does not fixe a basic work week or guarantee of work beyond eight hours during any work day, as do those rules with which the Board is familiar and which expressly state with exactness and preciseness the number of days constituting the work week. Therefore, we find nothing by express agreement which prohibits the Carrier from blanking positions on holidays where the work, on the particular day, does not exist or has materially diminished. Of course if there is substantial work of the position remaining on the day in question, the Carrier would be no more privileged to blank the position than it would be to abolish jobs where work remains. Compare Awards 5016, 4102 and 4179.

The Organization's argument, that work remained, has been noted, but we are impelled to take a contrary view by reason of the Carrier's assertion that the positions were not needed on the holiday, due to a decline in heavy commuting traffic existing on business days but not present on holidays.

We find greater merit in the Organization's claim that the posting of these positions, showing the employes on duty except for assigned rest days, constituted a regular assignment of positions for five days a week. Such posting appears to be required by Rule 9 (f) providing that the employe be given notice of scheduled relief days. It is recognized, however, that except for notice to the employe of his scheduled relief days he would have no way of being aware of scheduled time off. On the other hand, he is chargeable with notice of the terms and conditions of the agreement, as the same applies to holiday work, even in the absence of any other notice, and the posting of schedules is subject to the holiday section of Rule 2, the same as it is subject to any other express provision of a collective agreement. Accordingly, we hold that the claim of the Organization rests more on a proper interpretation of the holiday rule than it does on past practice, guarantees scheduling relief days, or the other contentions raised.

We find in the rule a valid implication, and consider it to be a proper inference to draw from the language of the parties, that where there is no work of a position to be performed on a holiday, the Carrier may blank the position, on reasonable notice to the employe, but where the employe is required to work he is entitled to be paid at the rate of time and one-half. The requirement of reasonable notice is because the employe, in the absence thereof, may rely on the regular schedule of work which amounts to a call and if he reports for service and is not used, is allowed one day's pay by Rule 7.

We believe the foregoing views are in accord with Award 189, involving a case where there was greater reason for sustaining a guaranteed work week than here. The distinction made by the Organization in the rules has been noted but we believe that when the parties to the instant agreement used language limiting holiday rates of pay to "employes required to work," a proper analogy can be drawn between rules.

Awards relied on by the Organization to support a claim of violation of Rule 2, of the subject agreement, in the main concern situations where the regularly assigned occupant of the blanked position was used on other positions and thereby required to suspend work on his own position during regular hours. Accordingly, they are not in point on the facts.

Therefore, we have concluded, under all the facts and circumstances of this case, and the rules in question, that there has been no violation of the agreement and the claim should 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 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

The Carrier did not violate the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of November, 1950.