Award No. 5634
Docket No. MW-5584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement when it failed to compensate Pumper James Hoskins for a period of eight (8) hours on Monday, September 5, 1949.

(2) Pumper James Hoskins be paid the difference between what he did receive at his time and one-half rate for a two (2) hours and forty (40) minute period, and what he should have received at his time and one-half rate for an eight (8) hour period on Monday, September 5, 1949.

EMPLOYES' STATEMENT OF FACTS: Mr. James Hoskins is employed as a Pumper at Rondout, Illinois.

On Labor Day, September 5, 1949, a day that fell within his assigned work week, Pumper Hoskins was not employed for a period of eight (8) hours. In lieu thereof he was compensated under the provisions of the Call Rule and allowed pay at his punitive rate for a period of two (2) hours and forty (40) minutes.

As a result of this assignment, Hoskins was compensated at his straight time rate of pay for a total of thirty-two (32) hours, and at his overtime rate of pay for a total of two (2) hours and forty (40) minutes during the work week beginning September 5, 1949.

The effective agreement provides that pumpers will not have their hours reduced below eight (8) per day for five (5) days per week.

The Employes contended that Pumper Hoskins was entitled to the difference between what he received at the punitive rate of pay for a period of two (2) hours and forty (40) minutes and what he should have received at his punitive rate of pay for eight (8) hours on September 5, 1949.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated November 1, 1940, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

those employes had prior to September 1st, 1949 did not extend to nor include holidays.

4. The so-called 40 Hour Week Agreement of March 19th, 1949 specifically provided that "existing provisions relating to pay for holidays shall remain unchanged" and there is no justification for extension of the "guarantee" as now contended by the Employes.

The claim is not supported by the provisions of the schedule rules and is contrary to the interpretations thereof and practices thereunder which have been in effect and for these and other reasons cited, we respectfully request that the claim be declined.

The Carrier asserts that all data contained herein in support of its position has been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD. This case involves the question whether an hourly rated employe, assigned and guaranteed 8 hours work for 5 days per week, was entitled to work a holiday falling within his assigned work week.

The Carrier worked him on the holiday not to exceed 2 hours and 40 minutes at the rate of time and one-half, relying upon Rule 23 (1) which reads:

> "Except as otherwise provided in these rules, employes who are required to work on their assigned rest days and the following holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the State or Nation or by proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half with a minimum of two (2) hours and forty (40) minutes at the rate of time and one-half."

The claim is based on the Holiday Rule and on Rule 24 (f) which reads:

> "Positions not requiring continuous manual labor such as . . . pumpers . . . will be paid an hourly rate. The hours of employes covered by this rule shall not be reduced below eight (8) per day for five (5) days per week."

Claimant was thus paid 32 straight time hours and 2 hours and 40 minutes at time and one-half, which is the equivalent of 36 straight time hours. The claim is for an additional 5 hours and 20 minutes at time and one-half, which is the equivalent of 8 straight time hours making a total of 44 straight time hours for the holiday week.

FIRST. The Forty Hour Work Week Agreement has nothing to do with this case for it expressly left existing provisions relating to pay for holidays unchanged; and, while it reduced existing weekly and monthly guarantees to five days, no guarantee was created where none existed. This, of course, left the parties on the properties free to negotiate any new kind of guarantee they saw fit.

The parties might have excluded weeks in which holidays fall from the terms of the guarantee, as some agreements do. Or the guarantee might have embraced no more than the equivalent of an aggregate of 40 straight time hours per work week. Compare Award 5213 where the guarantee excluded holidays.

The guarantee contained in Rule 24 (f) unequivocally requires no less than 8 hours for 5 days per week without any exception or qualification.

SECOND. The Carrier's historical argument about the exception contained in Rule 23 (l) comes down essentially to the proposition that the exception is now surplusage. If this is so, what is left in Rule 23 (l) together with Rule 24 (f) sustains the claim. The minimum in the Holiday Rule is a minimum, not a maximum. The guarantee required 8 hours work for 5 days and the assignment included a day compensable at the rate of time and one-half. The claim as presented should be sustained (Interpretation No. 1, Serial No. 93 to Award 4248, Awards 4509, 4970).

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 Agreement was violated as above found.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of February, 1952.