Award No. 7063
Docket No. CL-6815

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rule 4-A-2(a), when W. M. Hosband and H. G. Reynolds, Extra Station Baggagemen, Williamsport, Pa., Susquehanna Division, were compensated at the straight time rate of pay, February 22, 1951.

(b) These employes be compensated for the difference between the straight time rate of pay allowed and the time and one-half rate of pay for February 22, 1951. (Docket E-786)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case, W. M. Hosband and H. G. Reynolds, are extra employes holding extra list positions of Extra Station Baggagemen established in accordance with the provisions of Rule 5-C-1 of the Rules Agreement. However, the only point pertinent to this case is that the Claimants are extra or unassigned employes on the date in question—one of the seven recognized Holidays.

On February 22, 1951 the Claimants were used in augmentation of the regular force as Station Baggagemen at the Passenger Station, Williamsport,

Therefore, it is respectfully submitted that the claim in the instant case should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are extra employes (Station Baggagemen) at the Williamsport Passenger Station. On February 22, 1951, a holiday, they were used to augment the regular force of Baggagemen for 8 hours and were compensated at the pro rata rate of pay. They contend for the time and one-half rate.

The Organization relies upon Rule 4-A-2(a), current agreement, effective September 1, 1949, which provides:

> "Work performed on the following legal holidays, namely—* * * Washington's Birthday * * *, shall be paid at the rate of time and one-half."

The foregoing rule is plain and explicit, and standing alone would require the payment of the time and one-half rate to any employe, including an extra employe, for work performed upon designated holidays. On May 17, 1944, a letter agreement was entered into in connection with the settlement of a number of claims, which provided:

> "It was agreed at the meetings referred to that Rule 4-A-6(d) of the agreement now in effect applies in the case of extra employes required to perform service on Sundays and Holidays and that Clerks' Regulation 4-A-5 applied to such service in advance of May 1, 1942. It is understood, therefore, that these claims insofar as they involve the performance of services for periods not exceeding eight hours on Sundays and holidays are withdrawn."

In Award 4830, in dealing with this letter agreement as it related to the compensation of extra men for holiday work, we said:

> "The effect of this provision is to make Rule 4-A-6(d) rather than Rule 4-A-5 applicable to Sunday and holiday work. Under tse rules of contract construction we should, if we can, give effect to all provisions of the contract. We must conclude, therefore, that the agreed upon substitution of Rule 4-A-6(d) for Rule 4-A-5 was for the purpose of applying the former rather than the latter to extra employes notified or called on Sundays to perform extra work as distinguished from extra board employes assigned to temporary positions with a daily tour of duty of eight hours. Such on interpretation would also be consistent with that part of Rule 4-E-2 providing: 'Extra employes will be compensated at the rate of the position to which temporarily assigned.' It would likewise be consistent with the withdrawal of claims of less than eight hours for Sunday and holiday work by extra employes, such claims not being under consideration and subject to the letter of settlement of May 17, 1944."

We think it is clear therefore, under the letter agreement as construed by Award 4830, that extra employes used to augment the regular force, as distinguished from extra board employes assigned to temporary positions, are to be paid at the pro rata rate on this Carrier, at least so long as the letter agreement of May 17, 1944, remains in force.

The Organization asserts that the letter agreement was not effective after September 1, 1949, the effective date of the Forty Hour Week Agree-

ment. No provision of the current agreement supports this contention. The Forty Hour Week Agreement shows a clear intention that pay for holiday work shall remain unchanged. Art. II, Sec. 3 (d), Agreement of March 17, 1949. See also Award 5634. Under the foregoing, no basis for an affirmative award exists.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1955.