

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad, that,

(1) Carrier violated the Agreement when it failed and refused to properly and fully compensate J. J. Stanton, for Monday, December 26, 1949, (observed as the Christmas Holiday), and,

(2) As a result of the violation Carrier shall now be required by appropriate order to pay claimant for six hours at the overtime rate of his position, or \$10.39.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties at the time this dispute arose bears an effective date of August 9, 1944, copy of which is presumed to be on file with your Board.

Claimant J. J. Stanton, occupied Rest Day relief position No. 21, with assignment of four days at Waltham, Mass., and one day per week, Monday at Wilmington, Mass.; hours of assignment at Wilmington being 6:30 A.M. to 2:30 P.M. Days and hours at Waltham being immaterial to the issue here.

As December 25, 1949, fell on Sunday, Monday was proclaimed and observed as the Holiday.

Claimant was not notified by Carrier at home or while enroute that the Wilmington Station would be closed on Monday the 26th, and reported for work as usual; however, upon assuming the job found the station building locked and the keys not in the customary place. Upon contacting the dispatcher from a telephone outside the building, he was told that the agency at Wilmington would be closed that day and that he should go home. During his time at the station train No. 303 arrived and dropped off a lock-pouch of mail, which claimant protected until postmaster showed up, at whose request Claimant delivered the mail pouch to the post office. Shortly thereafter he returned to his home at Everett, Mass.

He turned in time for eight hours at the appropriate rate, time and one-half, but the claim was declined, Carrier, instead, paying him on the "call" basis, or two hours at time and one-half rate. Upon appeal of the claim to the highest officer of the Carrier to whom appeal may be made, same was denied.

ployes are required for services on the above holidays they will be paid at the rate of time and one-half on a minute basis with a minimum of two hours for each tour of duty for such services."

I do not wish to convey that the Forty-Hour Week Agreement was not in effect at the time of this claim because it was the five-day work week that set up the relief job held by claimant at the time, with four days at Waltham, Mass. Ticket Office and one day (Monday) on the first trick at Wilmington, Mass. Station. This latter point is the one involved in this claim and claim date of Monday, December 26, 1949, a Christmas holiday, observed on Monday in 1949.

Therefore, there is the exception in the guarantee rule then in effect and in the current agreement as to excluding certain holidays not worked.

POSITION OF CARRIER: Wilmington, Mass. station is one of the stations customarily closed on holidays, and it was closed on date of claim. A customary circular notice was issued outlining stations closed on holiday and services of employees not needed thereat on the holiday involved. Same was issued covering December 26, 1949 holiday involved in this claim. The contention is that the notice or circular was not seen by claimant.

Agent C. W. Hibbs, at Wilmington, made the written statement December 30, 1949—

"I do not see why Mr. Stanton should report for work on December 26. All important notices are left on the right hand corner of the desk but apparently he did not look at them. I would suggest that relief men make inquiries of the second trick man whenever a holiday occurs to ascertain if he is to work or not."

However, the facts are that he did report and then learned that his position was not required to work and he went home. He did not remain on duty. On a basis of equity alone the Superintendent authorized a payment of two hours at time and one-half, under guarantee rule, Article IV—"provided that if employees are required for services on the above holidays they will be paid at the rate of time and one-half on a minute basis with a minimum of two hours for each tour of duty for such services".

Please see your Board's Award No. 883.

All data and arguments herein contained have been presented to the Organization in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant J. J. Stanton held rest day relief position No. 21, with assignment of four days at Waltham, Massachusetts and one day per week, Monday, at Wilmington, Massachusetts, with hours from 6:30 A. M. to 2:30 P. M. at the latter station.

As December 25, 1949, was Sunday, this holiday was celebrated on Monday, December 26, as provided in the Holiday Service Rule (Article 37).

Claimant made the trip from his home to Wilmington Station on Monday the 26th and found the building locked and the keys not in the customary place. He telephoned the dispatcher who informed him that Wilmington was closed on account of the holiday.

Carrier customarily issues a circular notice advising employees which stations are to be closed on holidays. Such a notice was issued for December 26, 1949, indicating that the Wilmington Station would be closed, but since Claimant was at Waltham (which station was to be open on the holiday), he claims not to have received a copy of this notice.

Stanton assumed that he had a standing call to report to Wilmington each Monday; unless notified to the contrary. Carrier acknowledges that it is obligated "to notify the individual in advance whenever a position is blanked on a legal holiday." Knowing this, Carrier paid Claimant for two hours' time at the holiday rate on a "call" basis. (Employes' Exhibit No. 2).

Article 7 (c) provides that,

"Employes called for service and not used will be allowed no compensation if the call is cancelled prior to leaving home; if the call is cancelled while enroute from home and prior to leaving home station or performing work at home station, three (3) hours' pay at the rate of the position for which called will be allowed; if call is not cancelled prior to boarding the conveyance to be used for transportation, eight (8) hours' pay at the rate of the position for which called will be allowed." (Emphasis supplied.)

Having acknowledged that Stanton should be paid on a call basis, the facts of this case clearly indicate that he should have been paid for eight hours for the day in question.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not properly apply Article 7 (c) of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1955.