Award No. 7134
Docket No. CL-7257

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 Rules 4-A-2 (c) and 4-C-1, by not permitting certain regular employes, members of freight station gangs, to work on February 24, 1953, and using in their place extra list employes, Freight Station, Harrisburg, Pa., Philadelphia Division.

(b) Certain named claimants be paid a day's pay at time and one-half on account if this violation. (Docket E-871)

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 hold 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 hereof may be referred to herein from time to time without quoting in full.

The Claimants in this case are members of freight station trucker gangs at the Freight Station, Harrisburg, Pa., on the Carrier's Philadelphia Division. They are: R. M. Emswiler, C. A. Staph, R. L. Miller, A. H. Bryan, H. W. Myers, D. E. Brown, G. W. Crone, L. J. Carney, G. R. Heider, J. M. Boland, C. W. Patton, J. W. Matter, W. A. Kyle, L. T. Feeser, and P. S. Underkoffler.

The work-week of the claimants is Tuesday through Saturday, with Sundays and Mondays as rest days as provided in Rule 5-E-1 (c), which reads:

OPINION OF BOARD: Claimants are regularly assigned members of trucker gangs at the Harrisburg, Pennsylvania, Freight Station, with a work week of Tuesday through Saturday, with Sundays and Mondays as rest days. Monday, February 23, 1953, was nationally observed as a holiday (Washington's Birthday) and fell on claimants' second rest day. Consequently, under Rule 4-A-2 (c), Tuesday, February 24, 1953, became a holiday for claimants. It was necessary that the work be performed on February 24, 1953, and Carrier caused it to be performed by extra employes taken from the extra list established at this point. Claimants contend that if the holiday work of their assigned positions was to be performed they were entitled to perform it.

The record shows that claimants' positions were advertised not to work on holidays. Carrier asserts a right to so advertise claimants' positions by virtue of Rule 4-A-3, which provides:

> "4-A-3. (Effective September 1, 1949). The working days per week for regularly assigned employes shall not be reduced below five unless agreed to by the Management and the General Chairman, except that this number may be reduced in a week in which holidays occur by the number of such holidays. This rule (4-A-3) does not prohibit the abolition of a position at any time."

Carrier asserts that this rule specifically provides that a work week may be reduced by the number of holidays in the work week while the Organization contends that holidays may be blanked if the work is not to be performed by any one. Carrier relies primarily on Awards 5668, 6385, 6586, of this Division. These awards hold that a carrier may suspend work on holidays falling within a work week without violating the guarantee rules. We are in accord with these holdings but they do not answer the question here presented. The question is: May a carrier blank a holiday within a work week and use extra employes to perform the holiday work? We think not.

The Carrier alleges that extra employes may be used on holidays falling within the work weeks of regular employes under the provisions of Rule 4-A-1 (i) which provides:

> "4-A-1 (i) (Effective September 1, 1949) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

This rule is similar to Art. II, Sec. 3 (i) of the Forty-Hour Week Agreement, effective September 1, 1949. Section 3 (i) was the subject of interpretation by the Forty-Hour Week Committee and in its decision that committee said in part with reference thereto:

> "1. Section 3 (i) did not create the right to utilize extra or unassigned employes unless a carrier has that right under existing agreements or practices. However, where that right exists, the intent of Section 3 (i) is that where work is required by the carrier to be performed on a day which is not a part of any assignment, either an available extra or unassigned employe who would otherwise not have 40 hours of work that week or the regular employe may be used; unless such work is performed by an available extra or unassigned employe who would otherwise not have 40 hours of work that week, the regular employe shall be used. Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used. Rules in existing agreements shall be modified to conform with the intent above expressed. * * *"

Decision No. 2. Forty-Hour Week Committee.

From this it is plain that if holiday work is assigned to a regular employe performing the work in the work week in which the holiday occurs, it belongs to the regular employe by virtue of his assignment. If the holiday work is not assigned, it likewise belongs to the regular employes under the interpretation of the Forty-Hour Week Committee. But in either instance, holiday work may be blanked without penalty under Rule 4-A-3.

Carrier urges, however, that it was not a party to Decision No. 2 of the Forty-Hour Week Committee and consequently is not bound by it. There is no merit to this contention. The Carrier was a party to the Forty-Hour Week Agreement. It is bound by the terms of that Agreement. It is true that the Forty-Hour Week Committee was set up under the Forty-Hour Week Agreement effective September 1, 1949, to compose disputes submitted to it involving the meaning to be given to the Forty-Hour Week Agreement. Necessarily its decisions were binding only upon the parties to the disputes submitted. But the interpretations of the provisions of the Forty-Hour Week Agreement are binding upon all signatories thereto. It would border on the ludicrous to say that a provision of the Forty-Hour Week Agreement meant one thing to one signatory to it and something altogether different to another. It might be argued, also, that the Forty-Hour Week Agreement, effective September 1, 1949, was not self-executing and became effective only when incorporated into the schedule agreement with this Carrier. Assuming the correctness of this statement, we necessarily hold that the incorporation of Section 3 (i) into the current collective agreement in terms carries with it the interpretations given to that section by the Forty Hour Work Committee, except when a contrary meaning is expressly given to the provision which was not done here. The Carrier states, further, that we have already held in Awards 6078, 6079 and 6080 that a carrier not a party to the Forty-Hour Week Agreement is not bound thereby. The carrier in those cases was the Railway Express Agency, Inc. It does not appear to have been a party to the Forty-Hour Week Agreement as was the carrier in the present case. It does appear to have adopted Section 3 (i) in terms in its Rule 45-A (j). This would ordinarily include the meaning given to Section 3 (i) of the Forty-Hour Week Agreement by interpretations made by the Forty Hour Week Committee. We point out that in the foregoing awards the conclusions were correct irrespective of Decision No. 2 in that it was not shown that work of the regular employe's position was performed on the holidays in question. The holding that Decision No. 2 had no application in those cases was a gratuitous one not necessary to the decision, and is not, therefore, a binding precedent on that point.

The holding that regular assigned employes are entitled to perform holiday work on holidays falling within their work weeks, except where such work is blanked, is supported by settlements made by this Carrier on the property. The record discloses that Carrier paid regular employes the holiday rate for time lost when extra men were used on such days. This appears to have been in conformity with Decision No. 2 and the correct application of the controlling rules.

The Carrier asserts that the pro rata rate only constitutes the measure of claimants' loss. We point out that the rate of pay for work performed on specified holidays is time and one-half, Rule 4-A-2, current Agreement. The contract value of holiday work lost is time and one-half. In effect, the regular rate for holiday work is time and one-half. It does not involve the claim for an unearned penalty as in the case of a claim for time and one-half for overtime lost. We conclude that the claim should be sustained at the time and one-half rate.

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 charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.