Award No. 7136
Docket No. CL-7311

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

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

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

(1) That Carrier violated rules of currently effective Agreement dated January 1, 1952, when on Monday, September 7, 1953, it unilaterally laid off Rex R. Wilson, Janitor, Yard Office at Vancouver, Washington, at 11:00 A. M. on completion of but four hours of his assigned day's work period.

(2) That Mr. Wilson be paid for wage loss sustained, i.e. four hours' pay.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. Wilson, is regularly assigned to Relief Clerk's position at Vancouver. He is by bulletin assignment, to work each week:

Relieve Baggagemen 1 P. M. to 10 P. M. on Thursday
Relieve Baggageman 4 P. M. to 1 A. M. on Friday
Relieve Baggageman 4 P. M. to 1 A. M. on Saturday
Relieve Yard Clerk 8 A. M. to 4 P. M. on Sunday
Relieve Janitor 7 A. M. to 3 P. M. on Monday
Rest days Tuesday and Wednesday of each week

Copy of bulletin assigning Mr. Wilson to this relief job is attached as Employes' Exhibit A.

Pursuant to claimant's assignment he reported for and actually started his work day at 7 A. M. on Monday, September 7, 1953, relieving the regular Janitor on one of the latter's designated rest days. At or about 11 A. M. he was told that his services for the balance of the day were not needed and that he was released from further service on that day. See Employes' Exhibit B. Wilson had no prior notice of Management's intent to lay him off before completion of his day's work.

Mr. Wilson claimed pay for the day—eight hours—which Superintendent Monahan declined on September 16, 1953. Employes' Exhibit B.

Claim was appealed to General Manager Showalter and declined by him on November 18, 1953. Employes' Exhibit C.

Attention is directed to Referee Leiserson's Opinion in Award 6691, ORT versus Southern Railway Company, particularly the portion quoted below:

> "To the extent that there were awards of this Division (prior to the 40-Hour Agreement) which ruled that positions could not be blanked because they were necessary to continuous operation, such rulings are not applicable under the 40-Hour Agreement. (Award 5589)"

Referee Leiserson also made reference to Award 5528, ORT versus Pennsylvania Railroad, in which Referee Whiting summed up the rulings of the Third Division in many previous cases as follows:

> "It is admitted that there is no rule in the Agreement specifically prohibiting the blanking of a position and it is clear from our awards that the blanking of . . . positions, because of the absence of the regularly assigned employe, is not in itself a violation of the Agreement in the absence of a specific prohibition therein. Hence there is no merit in this claim."

There was no rule in the Clerks' Agreement on this property, which antedated the 40-Hour Agreement, specifically prohibiting the blanking of positions.

In Award 5589, Signalmen versus Reading, Referee Whiting also held, among other things, that:

> ". . . the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions, . . ."

In conclusion, Carrier has shown that it has not violated any of the rules cited by the Employes, but that rather it has strictly complied with each of them. Further, that payment already made claimant conforms precisely to the specific rule in the agreement, which provides the basis of payment for work performed on the holiday in question.

It has also shown that its interpretation of the various rules cited conforms to the interpretation placed on identical rules by your honorable Board.

There being no rule in the current Clerks' Agreement on this property to support the claim, the Carrier respectfully requests that it be denied.

All data in support of the Carrier's position have been submitted to the Organization and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Carrier by the Organization is reserved by the Carrier.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was a regular assigned relief clerk at Vancouver, Washington. He was assigned to work Thursdays through Monday, with Tuesday and Wednesday as rest days. On Monday, September 7, 1953, a holiday (Labor Day), he reported for duty as usual and worked the first four hours of his regular assignment. He was then informed for the first time that his services were no longer required on that day and he was released from further service at the direction of the Carrier. Claimant contends he was entitled to work the whole day and asks for compensation for an additional four hours' pay at the holiday rate.

The Organization relies upon Rule 49, Article 6, which reads:

> "Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

It is contended that, under this rule, claimant was entitled to work the full eight hours on the holiday in question for the reason that there are no exceptions in Article 6 upon which the Carrier can rely. The Carrier relies upon Rule 68, which states in part:

> "Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below five per week, except that this number may be reduced in a week in which holidays occur by the number of such holidays."

We must give effect to all rules of the Agreement. Rule 49 is a general rule, dealing with hours of service and meal periods. Rule 68 is a special rule in dealing with holiday work. To give effect to both we must treat Rule 68 (the special rule) as if it were superimposed upon Rule 49 (the general rule). This is clearly the mutual intent of the parties and we are obliged to give effect to that intent.

The Awards of this Division hold that a holiday is to be treated as an unassigned day. If there is work to be performed on a holiday, the employe otherwise assigned on that day is entitled to it. Award 7134. The Carrier can blank the holiday work without penalty. If the Carrier can so blank it for the whole day, it can do so for any part of it, as it is not considered as a part of the work week assignment. In the confronting case, Claimant was assigned to work all Monday relief. The assignment made no mention of holidays. In Award 1606, Second Division, that question was dealt with and it was there decided that a 5-day assignment was not thereby assured the claimant irrespective of the holiday rule. The Board said:

> "To us their agreement means in respect to working employes on holidays, the carrier has two alternatives: It may work them, or it may not. But if it chooses the former alternative, it incurs a penalty in the form of paying time and one-half rates for the holiday hours worked."

We necessarily conclude that claimant was entitled only to the hours worked on the holiday at the time and one-half rate. He was so paid and a valid claim does not exist.

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 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 23rd day of September, 1955.