Award No. 7433
Docket No. CL-7556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

JACKSONVILLE TERMINAL COMPANY

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

1. The Carrier violated the Clerks Agreement effective September 1, 1949 and the joint agreement signed at Chicago, Illinois August 21, 1954, and more particular Rules 36½ and 47 of the agreement effective September 1, 1949, and Article II of the agreement signed at Chicago August 21, 1954, by refusing to pay a straight time day's pay for the holidays which fall within the work week (as defined in paragraph (c) of Rule 47), of individual employes assigned as part of 7 day assigned positions.

2. That the Jacksonville Terminal Company shall effective May 1, 1954, and thereafter pay a straight time day's pay in accordance with Article II of the August 21, 1954 Chicago Agreement for each holiday outlined in that article for employes who come under Rule 47 (c) and who are assigned relief days which fall on the actual holiday because such employes' holiday under paragraph (c) of Rule 47 must be the first work day of the employe following the actual holiday, provided each employe covered by this claim has qualified for the holiday pay by working on the work day prior to the holiday and the work day following the holiday as well as that Employe's holiday.

EMPLOYES' STATEMENT OF FACTS: There exist an agreement effective September 1, 1949, containing rules 36½ which reads as follows:

"RULE 36½.—The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes.

"(a) General. The Carrier will establish, effective September 1, 1949, for all employes subject to this Agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work week may be staggered in accordance with the Carrier's operational

OPINION OF BOARD: The claim is that when a holiday falls on one of their rest days, employes are entitled to holiday pay at the pro rata rate for the first workday after such rest day, under Article II, Section 1 of the August 21, 1954 Chicago National Agreement and Rule 47 of the Agreement between the parties on the property; and it asks holiday payment for all employes in such circumstance, effective May 1, 1954.

The pertinent parts of the rules involved read as follows:

"Article II. Section 1. Effective May 1, 1954 each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays."

"Rule 47 (b) Holiday Work. Work performed on the following legal holidays, namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or by proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half.

(c) When a regularly assigned employe has an assigned relief day other than Sunday and one of the holidays specified in paragraph (b) of this rule falls on such relief day, the following work day will be considered his holiday."

Claimant's argument is that Rule 47(c) provides for the substitution or observance of another day in place of the holidays enumerated in Section 1 of Article II, as specifically contemplated by the Note to that Section; and that therefore employes covered by Rule 47(c) are entitled to a day's straight time pay under Section 1 for the substituted day, namely, the workday following the rest day upon which the holiday falls.

Carrier argues that Section 1 clearly is limited to holidays which fall on a workday of the workweek of an employe, whereas the claim is for holidays which fell on rest days. Further, that Rule 47(c) covers premium pay for work performed on holidays and is not concerned with the kind of holiday pay provided by Section 1 of the National Agreement. Finally, that the note to Section 1 was intended to cover holidays other than those enumerated in Section 1, such as local or regional holidays, where such holidays have been observed in place of the seven listed in the rule.

We find no ambiguity in the first paragraph of Section 1. In order for an employe to receive the pay provided therein, one of the seven listed holidays must fall on a **workday of** his workweek. It is implicit in the claim before us that pay is being sought for employes in cases where one of the seven listed holidays falls on a rest day rather than a workday of their workweeks. Thus, there is no basis for the claim in the language of the first paragraph alone. Any support for the claim must come from the Note. The language of the Note is less clear and is subject to interpretation. Is the provision in Rule 47(c) that when a holiday falls on an employe's rest day, "the following work day will be considered his holiday" an "agreement under which any other day is substituted or observed in place of" one of the listed holidays, within the meaning of the Note? We think not. Rule 47 provides for pre-

cisely the same seven holidays as does Section 1. No provision is made for substituting or observing any other day in place of any of these seven holidays. The provision is that if one of the holidays falls on an employe's rest day, the following work day shall be "considered" his holiday. It is so considered for the purpose of providing him time and one-half pay if he works on that day. "Considering" the work day as a holiday for that purpose is not substituting or observing any other day in place of the holiday in the sense in which we understand that phrase to be used in the Note.

A holding that the holiday pay provisions of Section 1 do not apply in the circumstances of this case does not, contrary to Claimant's contention, change Rule 47(c). Rule 47(c) intended that the workday following the rest day be considered as a holiday for the purposes of that rule; it continues to be so considered. Rule 47 in its present form antedates the August 21, 1954 Agreement by five years. Section 1 of the latter Agreement deals with a different aspect of holiday pay than does Rule 47. It does not follow because the workday following an employe's rest day is considered his holiday for the purposes of Rule 47, that the same workday is the holiday observed under Section 1. On the contrary, both from the language of Section 1 and its background (See Second Division Awards 2052 and 2169, and Third Division Award 7430, it appears that such an application would be inconsistent with its purpose. Under the rules cited in this case, where a holiday falls on an employe's rest day, his holiday for the purposes of Rule 47 is the first workday after his rest day; for the purposes of Article II, Section 1 of the National Agreement, it is the day on which the holiday actually falls.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.

SPECIAL CONCURRING OPINION (AWARD 7433)

The undersigned concur completely in the Findings and Award herein. We also concur in the Opinion of Board herein with the understanding that, for the reason that Rule 47 (c) is a local rule which was continued in effect on this Carrier by agreement or practice, nothing in this Award alters the fact that rules, such as Rule 47 (c) in this case, were superseded by Article II of the August 21, 1954 Agreement.

/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ J. F. Mullen