Award No. 7434
Docket No. CL-7582

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

FLORIDA EAST COAST RAILWAY COMPANY

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

(a) Carrier violated and continues to violate Article II, Section 1, of the August 21, 1954 Agreement by failing and refusing to allow an additional day's pay at the pro rata rate to regularly assigned employes when the holidays specified in the agreement fall on the second of their rest days, and

(b) Carrier shall compensate Clerk H. L. English and all other employes similarly affected a day's pay at the pro rata rate, beginning with Decoration Day, 1954, and for each subsequent holiday that fell or falls on the second of their rest days between Decoration Day, 1954, and the time this claim is disposed of.

EMPLOYES' STATEMENT OF FACTS: Agreement has been reached with the Carrier, as shown by Employes' Exhibit "N", that this claim for an additional day's pay at the pro rata rate, under Section 1 of Article II, hereinafter quoted, will be progressed for one employe involved, H. L. English, and those of all other employes similarly affected retroactive to Decoration Day, 1954 will be disposed of on the basis of whatever award is made in that case.

Article II, Section 1, of the August 21, 1954 Agreement was made retroactively effective as of May 1, 1954. Back-time checks covering the additional day's pay provided for in Article II, Section 1, were issued to cover Decoration Day and July Fourth subsequent to September 6, 1954, and none of the regularly assigned employes with rest days of Sunday and Monday received compensation for the holiday for Decoration Day, 1954, which fell on Monday and for the Fourth of July which was observed on Monday, or the second of their rest days, although these employes were allowed on the first period September, 1954, payrolls an additional day's pay on September 7 for the Holiday of September 6 (Labor Day) that fell on Monday, their second rest day.

". . . when such holiday falls on a **workday of the work week of the individual employe.**" (Emphasis supplied.)

The claimant was compensated thereunder for Decoration Day, as the day on which that holiday was celebrated was a workday for him. The days on which July 4 was celebrated and Labor Day fell were, however rest days of his assignment and under the plain, unqualified and unambiguous provisions of the Article, he was not entitled to compensation thereunder for those holidays. The claim is, therefore, without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the employes.

(Exhibits not reproduced)

OPINION OF BOARD: This claim raises the same issue as that raised in Award 7433. In this case, as in that one, Claimant contends that a rule (Rule 50) adopted five years prior to the August 21, 1954 National Agreement—which rule provides for premium pay for work on holidays and provides further that if a holiday falls on an employe's second rest day, the day following will be considered his holiday—is determinative of the meaning of the term "holiday" as used in Article II, Section 1 of the National Agreement. Claimant argues that failure to regard the work day following the holiday in this case as the employe's holiday under Section 1 is a cancellation of Rule 50.

This claim could be disposed of by mere reference to the Award cited above, but in the interest of clarity, we repeat our reasoning in somewhat different terms. The parties agreed in 1949 that the workday following the holiday should be "considered" as the employe's holiday for purposes of providing premium pay for work performed on holidays. That was the extent of their agreement and that agreement is still being given effect on the property. The parties did not reach an agreement at that time as to what should be considered the same employe's holiday for purposes of an additional pro rata day's pay. That issue was considered by them, or their representatives, in 1954 and they agreed on Section 1 which clearly provides that with regard to the latter kind of holiday pay, an employe qualifies only if certain named holidays fall on a workday. The certain named holidays involved in this claim did not fall on workdays; they fell on rest days. Therefore, the employes on whose behalf the claim is filed are not entitled to the holiday pay provided in Section 1. As decided in Award 7433, the Note to Section 1 does not help the claim.

The provision in Rule 50 that the day following an employe's second rest day will be considered "his holiday" did not make that day "his holiday" for all purposes and in all circumstances. The intent of Section 1 that it should not be "his holiday" for the purposes of that Section is clear, and is not to be contradicted by reference to Rule 50, which was negotiated in other circumstances and for other reasons.

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 7434)

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 50 (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 50 (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**