Award No. 7479
Docket No. CL-7600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

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

1. The Carrier violated the revised clerks' agreement effective July 16, 1951 and a jointly signed agreement signed at Washington, D. C., December 15, 1954, between the Atlantic Coast Line Railroad and Cooperating Organizations which contained certain parts of an agreement signed at Chicago, Ill., August 21, 1954, between participating Eastern, Western and Southeastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations Signatory thereto and more particularly Rules 43, 58 and 60 of the agreement effective July 16, 1951, and Article II of the agreement signed at Chicago, August 21, 1954, which was approved by the Atlantic Coast Line Railroad by agreement December 15, 1954, by refusing to pay a straight time day's pay for the holidays which fell within the work week (as defined in Rule 58 (c)) of individual employes who are regularly assigned as part of six or seven day assigned positions.

2. That the Atlantic Coast Line Railroad 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 to all employes who come under Rule 47 (c) and who are regularly assigned and have relief days which fall on the actual holiday and whose holiday is moved over to the next work day as outlined in paragraph (c) of Rule 58. Under Rule 58 (c) of the agreement effective July 16, 1951, an employe regularly working a six or seven day per week assigned position and having a relief day falling on a holiday has that holiday moved over to his next work day, thereby causing the holiday to fall within his work week and if he qualifies by working on the work day prior and the work day following his holiday, he is entitled to and should be paid a straight time day's pay as outlined in Article II of Agreement dated August 21, 1954, at Chicago, Illinois.

EMPLOYES' STATEMENT OF FACTS: There exists an agreement effective July 16, 1951, containing Rule 43 which was placed in the agreement effective September 1, 1949, and reads as follows:

(Exhibits not reproduced)

OPINION OF BOARD: Claim is here made that the Respondent has violated the terms of the effective agreement bearing date of July 16, 1951, as supplemented by an agreement of December 15, 1954, which effectuated the National Agreement of August 21, 1954 on this property.

Claim is made for reparations for all employes affected account of Respondent's failure to allow holiday pay at the pro rata rate to all employes who are otherwise qualified and who are regularly assigned on 6 and 7 day positions and who have holidays which fall within the regular assigned work week, and/or when such holiday is moved up to the next work day within the alleged meaning of Rule 58 (c).

Pertinent rules involved are Rule 58 (b) and (c) and Article II, Section 1, and the Note thereto of the National Agreement of August 21, 1954. The pertinent parts of the rules involved read as follows:

> "Rule 58 (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."
>
> "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
> Washington's Birthday
> Decoration Day
> Fourth of July
> Labor Day
> Thanksgiving Day
> Christmas
>
> **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."

In substance the Organization asserts the Rule 58 (c) of the effective agreement should here prevail and that Section 1 of Article II of the National Agreement does not supersede the prior negotiated provision, to the effect, and with the result that when a holiday falls on an assigned rest day of an employe, such employe is entitled to holiday pay for the first regularly scheduled work day after such rest day.

The Respondent on the other hand asserts that Rule 58 (c) provides for premium pay for any work performed on holidays without regard to premium pay provisions of Section 1, Article II of the National Agreement, which clearly is limited to those holidays which fall on the work day of an employe, and not, as here, for holidays that occur outside of the regularly scheduled work week (rest days) of the employe.

We are of the opinion that the same rules and the same issues here in dispute were before this Board and properly resolved in Award 7433 wherein it was held:

> "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 precisely 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 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."

For the reasons stated above this claim is without merit.

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 30th day of November, 1956.