Award No. 7977
Docket No. TE-7550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie Railroad, that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to properly compensate James J. Manley for September 6, 1954 (a holiday).

2. Carrier shall be required to compensate James J. Manley for 8 hours at the pro-rata hourly rate of pay applicable to first shift Newark Bridge "NK" for September 6, 1954 (a holiday).

3. Carrier violated the Agreement between the parties hereto when it failed and refused to properly compensate H. C. Rupp for services rendered on September 6, 1954 (a holiday), at Callicoon, New York.

4. Carrier shall be required to compensate H. C. Rupp for 8 hours, at the pro-rata hourly rate of pay applicable to third shift, Callicoon, New York, in addition to that previously paid for such services on said date.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collectively bargained agreements between the Erie Railroad Company, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Union. The agreement became effective on the 1st day of January, 1939, and has been amended. This agreement and all subsequent agreements and amendments are made a part hereof as though copied herein word for word.

There are included in this submission two separate disputes, but involving the same principle of agreement interpretation. Carrier's file, on both disputes, is shown at the top of Page 1 of this Submission. Both disputes were handled on the property, in the usual manner, to the highest officer designated by carrier to handle such matters, and were declined. The disputes arose by filing of claims by Employes and Carrier failed to adjust same. The matters having been processed in accordance with the Railway Labor Act, as amended, are now properly submitted to this Board for decision.

". . . the Board is not authorized or permitted to revise or amend the governing rules of the Agreement. Nor can we speculate as to what the intention of the parties may have been when the Agreement was written. We are required in determining the rights of the parties to interpret the Regulations as they are written in the Agreement, and we have no authority to modify or amend the provisions in any way. This must be done only by negotiation between the parties. This has been held in numerous Awards by the Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board."

The Carrier has shown that under the applicable Agreement, particularly Article II, Section 1, of the August 21, 1954 Agreement, the Claimants are not entitled to holiday pay which they claim.

The Carrier, therefore, submits that your Honorable Board should deny the claim in its entirety.

All data contained herein have been presented to or is known to the Petitioner.

(Exhibits not reproduced)

OPINION OF BOARD: As an extra employe Claimant H. C. Rupp worked the assignment of an absent regularly assigned employe on September 3, 1954, took the rest days of the position on September 4 and 5, and worked the position on September 6 and 7. September 6, 1954, was Labor Day; for that day Claimant Rupp was compensated at the rate of time and one-half, and herein he additionally requests eight hours at the pro rata rate.

During the period involved herein extra employe James J. Manley was temporarily assigned to a relief position which had no incumbent (the position was under bulletin); he performed no service on September 6, 1954, and received no compensation; he now requests eight hours pay at the pro rata rate for that day.

Claimants rely on Section 1, Article II of the August 21, 1954, National Agreement (which was effective May 1, 1954), in combination with Rule 21 of the Parties' Collective Agreement. The first mentioned "holiday" provision states that "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 seven named holidays, including Labor Day. In Second Division Award 2169 it was concluded that this provision:

"* * * was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof."

This conclusion was quoted and followed by the Third Division in Award 7430. These Awards, and numerous other Second and Third Division Awards, lend strong support to the conclusion that Section 1, Article II of the August 21, 1954, National Agreement applies only to regularly assigned employes. Among others, see Second Division Awards 2052 and 2297; Third Division Awards 7431, 7432 and 7721.

But in the present case we must also consider the effect of the aforementioned Rule 21, the first sentence of which provides:

"Extra employes will receive the same **compensation** as the **person** they relieve." (Emphasis added)

The term "compensation" is broad, and Rule 21 states that the extra employe will receive the same compensation as the **person** he relieves—the Rule

speaks in terms of the **person**, not of the position. This Board has held that Section 1, Article II of the National Agreement makes compensation thereunder personal to the regularly assigned employe. In turn, Rule 21 by use of both the terms "person" and "compensation" makes that personal compensation a measure or yardstick for determining part of the compensation of the extra employe standing in the shoes of the regularly assigned employe. The necessary effect of Rule 21 is to require that Claimant Rupp receive the same compensation for standing in the shoes of the regularly assigned employe that the latter would receive were he not being so relieved. Rule 21 and Section 1 of said Article II do not conflict. They can be compatibly applied in combination so as to give full effect to each.

It follows from the above discussion that extra employe Rupp was entitled to the compensation requested herein not because of direct application of Section 1, Article II of the National Agreement, but as a result of the combined effect of that provision and Rule 21. The claim of H. C. Rupp must be sustained.

Claimant Manley, on the other hand, was not filling the position of any regularly assigned employe during the period involved herein and accordingly there is no basis, direct or indirect, for awarding him the requested pay.

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 Carrier violated the Agreement as to Claimant Rupp but not as to Claimant Manley.

AWARD

Claim of H. C. Rupp is sustained. Claim of James J. Manley is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1957.