

Award No. 8272

Docket No. CL-7905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

1. Carrier violated the provisions of the Clerks' Rules Agreement when on July 5, 1954 and September 6, 1954, legal holidays, it failed to utilize Train Clerk C. E. Conley to perform the work of his regular assignment on those dates and permitted the duties regularly assigned to his position to be performed by Chief Yard Clerk A. T. Martinek.

2. Carrier shall now be required to compensate Train Clerk C. E. Conley for eight (8) hours at the penalty rate of time and one-half for July 5, 1954, September 6, 1954 and all subsequent holidays on which he is not permitted to perform work occurring on his regular position.

EMPLOYES' STATEMENT OF FACTS: Employee C. E. Conley is regularly assigned to Train Clerk Position No. 580 Friday through Tuesday with Wednesday and Thursday as rest days. The assigned hours are from 3:00 P. M. to 11:00 P. M.; rate of pay \$15.136 per day.

The duties assigned to Position No. 580 and normally performed by Employee Conley during the hours of his assignment consist of the following on IHB, Belt and S. E. trains:

Enter trains on inbound record sheet, stamp the waybills, check each bill against the order book for diversions, etc., pull cards for loads and empties according to routing and special orders prevailing at the time, help make out the cards and line them up in train order, check on proper classification of empty box cars before trains are carded, answer calls and look up records and bills.

Employee Conley also checks out Illinois No. 65, which on holidays generally consists of about 100 cars, makes out empty car slips and pulls the bills for the loads, runs bills down if not on hand, figures the tonnage and gives the conductor the count on the bills when they are ready, makes out the company coal report and phones it to Tower B-17, mails out bills and books them in the Bills Mailed Book.

on the two holidays in question was overtime work and we submit they were not required to suspend work during regular hours to absorb overtime; in fact, because of holidays being involved rather than working days, they had no regularly assigned hours on such holidays. Rule 32 (h) is not applicable and contains no support for the claim here presented. The Carrier did not avoid the payment of overtime. As we have said, all the work which it required to have performed on the two holidays in question was paid for at the penalty rate of time and one-half. It simply was a question of reducing the number of employees called to perform overtime service on the holidays in keeping with the requirements of the service and the Carrier called those whose services were required in accordance with the schedule provisions.

The employees have attempted to contend that as all the positions involved were assigned in accordance with Rule 27 (d), then there was some provision of the schedule, which they have not cited, which required the Carrier to fill Position 580 on the holidays but we submit that holidays are not work days and the Carrier is not under any obligation to work the occupant of any position on a holiday when his services are not required. Schedule Rule 15 (e) specifically excludes holidays as work days because the rule provides that the work week of any regularly assigned employee may be reduced to the extent of a holiday. In this regard we should like to direct attention to the following quoted from the opinion in Award 7136 of the Third Division:

"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 employee 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 employees 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."

There is no basis for the claim presented in behalf of employee C. E. Conley and the Carrier respectfully requests a denial award.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: As appears from Award No. 8271 this day announced the same situation exists here as existed in that Award, and a similar Award is in order.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1958.