

Award No. 8309

Docket No. CL-7955

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: 1. The Carrier violated and continues to violate the provisions of Article 2, Section 1 of the Agreement between participating Eastern, Western and Southeastern Carriers and employees represented by the fifteen cooperating Railroad Labor Organizations, signed at Chicago, Illinois, on August 21, 1954*, and the provisions of Rule 22(b) of the current Rules Agreement when it has refused to properly apply the provisions of those agreements when a holiday has fallen on the second rest day of an employee's work week.

2. Mr. Albert M. Richards, and all other employees of the Carrier who have been or who are hereafter affected as a result of a holiday falling on their second rest day, shall be compensated at the pro rata rate in addition to the rate of time and one-half for service on the following work day.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has declined to compensate employees at the pro rata rate in addition to the rate of time and one-half for service performed the day following a holiday when the holiday has fallen on the second assigned rest day. As a result, many claims have been filed, among them, the one filed by Albert M. Richards who held regular assignment to the position of second trick Train Desk Clerk, 4:00 P. M. to 12 midnight, at Sacramento, California, with rest days of Sunday and Monday.

Monday, September 6, 1954, was Labor Day and was also Mr. Richard's second rest day. Claim for compensation at the pro rata rate in addition to the rate of time and one-half already allowed him for service performed on September 7, 1954, was denied, and the matter was then handled through the regular channel up to and including the Assistant to General Manager—Labor Relations, the highest officer of the Carrier designated to handle claims on the property—the last appeal having been covered by the General Chairman's letter of October 26, 1954, addressed to the Assistant to General Manager, Mr. W. A. Tussey, reading as follows:

“Through his letter of September 22, 1954, Division Chairman William Miller submitted claim to Superintendent Curtis in favor

* Hereinafter referred to as the Agreement of August 21, 1954.

employee's work week when one of the enumerated holidays falls on the employee's second rest day (other than Sunday). The employee so situated has observed the holiday the same as any one else, he had the day off. But, because of the specific requirement of Article II, Section 1, he is not entitled to eight hours' pay at the pro rata rate for that holiday because it did not fall on a work day of his work week.

This requirement is expressly stated in Article II, Section 1 and could not conceivably be amended by whatever language might appear in Rule 22(b), inasmuch as Rule 22(b) is the older of the two rules.

For the reasons above stated Carrier urges that the instant claim be denied.

All of the above has been presented to the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant occupied the seven-day position of Train Desk Clerk, South Sacramento Yard, hours 4:00 P. M.-12 Midnight, rest days Sunday and Monday. Labor Day fell on Monday, September 6, 1954, and claimant was paid eight hours at the time and one-half rate for work performed on Tuesday, September 7, 1954. The claim is for an additional eight hours' pay at the pro rata rate for claimant and all other employees affected as a result of a holiday falling on their second rest day. The claim is based on Rule 22(b) of the Clerks' Agreement and Article II, Section 1 of the Chicago National Agreement of August 21, 1954.

Similar claims under similar rules were considered by this Division in Awards 7433, 7434, 7479, and 7722. The principles applied in those Awards are equally applicable here; the claim is therefore denied.

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 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 8th day of April, 1958.