

Award No. 8387
Docket No. TE-8077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. The Carrier violated the agreement between the parties when it failed and refused to compensate the following employees for paid holidays observed on the dates shown below:

L. E. Rogers, May 31; July 5; Sept. 6; Nov. 25; Dec. 25, 1954

C. J. Lollar, May 31; July 5; Sept. 6, 1954

R. R. Pulley, May 31; July 5, 1954

A. E. Kohls, September 6, 1954

Mrs. G. B. Woods, July 5; Sept. 6; Nov. 25, 1954

E. A. Jones, September 6, 1954

Mrs. A. I. Avard, July 5, 1954

C. M. Hayden, May 31; July 5; Sept. 6, 1954

T. R. Shedlebar, May 31; July 5; Sept. 6, 1954

J. P. Bequette, May 31; July 5; Sept. 6, 1954

J. L. Rogers, September 6; November 25, 1954

C. J. Eifert, May 31; July 5, 1954

V. R. Avard, November 25, 1954

W. M. Houchen, September 6; November 25, 1954

Mrs. D. B. DeJean, July 5, 1954

Mrs. G. L. Veatch, May 31; July 5; Sept. 6, 1954

G. T. West, May 31; Sept. 6; Nov. 25, 1954

J. L. Rogers, December 25, 1954; January 1, 1955

Mrs. A. I. Avard, February 22, 1955

C. E. Singleton, February 22, 1955

D. R. Trimm, May 30, 1955

C. N. Barnett, July 4, 1955

2. The Carrier shall now be required to compensate these employees eight (8) hours' pay at the pro rata hourly rate of the positions to which assigned for each of the above enumerated holidays.

EMPLOYEES' STATEMENT OF FACTS: This claim, as may be noted, involves 45 instances where the Carrier has failed and refused to properly compensate extra employees who were "regularly assigned" to positions during periods when holidays occurred. The dispute directly involves an agreement between the parties entered into at Chicago, Illinois, August 21, 1954. The agreement, among other things, contains the following:

"ARTICLE II — HOLIDAYS

Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee 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 employee:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

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.

Section 2(a). Monthly rates, the hourly rates of which are predicated upon 169 $\frac{1}{2}$ hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The hourly factor will thereafter be 174 and overtime rates will be computed accordingly.

Weekly rates that do not include holiday compensation shall receive a corresponding adjustment.

Section 2(b). All other monthly rates of pay shall be adjusted by adding the equivalent of 28 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The sum of presently existing hours per annum plus 28 divided by 12 will establish a new hourly factor and overtime rates will be computed accordingly.

Weekly rates not included in Section 2(a) shall receive a corresponding adjustment.

Section 3. An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is cred-

When one considers together Article II, Section 1(h) and 1(i) of the March 19, 1949 Conference Committee Agreement and Article II, Section 1 of the August 21, 1954 Conference Committee Agreement, the similarity of the wording in Article II, Section 1(i) of the former agreement and Article II Section 1 of the latter agreement is such that the employees specified in the holiday pay rule are the regularly assigned employees whose "work week" begins on the first day on which the assignment is bulletined to work.

The 40-Hour Work Week Agreement clearly distinguishes extra, unassigned or furloughed employees from regularly assigned employees and the same distinction is apparent in Article II, Section 1, of the August 21, 1954 Agreement where the rule limits holiday pay to regularly assigned hourly and daily rated employees. There is no difference in the meaning of the words between two agreements.

The organization in its May 22, 1953 proposal sought a rule which would have given all employees seven holidays off with pay in each year, and having been unsuccessful in securing such a rule through the collective bargaining processes of the Railway Labor Act, they are here seeking to achieve that aim by Board Award in the guise of an interpretation of an agreement rule.

In summation, it is the Carrier's position that of the 45 claims submitted here:

(1) 19 of the May 31 and July 5, 1954 claims, also 9 of the Sept. 6, 1954 claims can be given no consideration because the parties have agreed that claims not timely presented and appealed will not be further considered.

(2) 3 of the claims were not handled to a conclusion on the property as required by the Railway Labor Act, as amended, and are therefore not properly before this Board.

(3) 1 claim, included in the 3 claims referred to in item 2, lacks agreement support because the claimant did not satisfy the qualifying provision of Article II, Section 3 of the August 21, 1954 Conference Committee Agreement in that she did not work on the work days preceding and following the holiday involved.

(4) All of the claims lack agreement support because the claimants were extra or unassigned employees while the Conference Committee Agreement rule provides holiday pay to only "regularly assigned employees".

All data in support of Carrier's position have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

OPINION OF BOARD: The claim and the issue involved herein are substantially the same as those in Docket TE-7973, decided by Award No. 8386.

The claim, therefore, is 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 3rd day of July, 1958.