Award No. 8507
Docket No. TE-8046

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad Company that,

A. A. Hendry, Jane E. Flynn, Mary G. Ellis, O. R. Grapes and E. G. Coyle are entitled to be paid at time and one-half in addition to their regular day's pay for working Sept. 7, 1954, if Labor Day Holiday, September 8, 1954, fell on their second assigned rest day, as provided for in Regulation 4-H-1 (c). (The above employes are monthly rated).

EMPLOYES' STATEMENT OF FACTS: Under the August 21, 1954 Agreement monthly rated employes were given a new monthly rate computed by adding 7 eight hour days to the monthly rate of pay and dividing by 12 months. So that regardless of whether worked or not worked the holiday is already figured into their monthly rate and is compensation for a holiday not worked even though that holiday falls on their first or second assigned rest day.

The instant claim is for time and one-half for working the day following a holiday, where the holiday fell on the second assigned rest day, which is the pay they would have received under Regulation 4-H-1(c) before the August 21, 1954 Agreement. Such payments were discontinued by the Carrier when the August 21, 1954 Agreement was signed on the basis that this Agreement automatically set aside Regulation 4-H-1 (c).

Local Chairman listed the above subject for discussion with the Superintendent at meeting held on October 13, 1954 and which was denied by the Superintendent on October 14, 1954. A joint submission was prepared between the parties on October 22, 1954. (Exhibit A-1) The General Chairman docketed the claim for discussion with the General Manager at meeting held on November 19, 1954 and which was denied by the General Manager on November 30, 1954 (Exhibits A-2 and A-3). The subject was then docketed with the System for discussion at meeting held on January 4, 1955 and which was denied by the System on January 19, 1955. On February 9, 1955, General Chairman advised the System that he did not concur with the decision and

The Carrier has established that Tuesday, September 7, 1954, cannot properly be considered as a holiday for the Claimants involved in this dispute, and it is clear, therefore, that Section 5 of Article II of the August 21, 1954 Agreement does not lend itself in support of the claims here before your Honorable Board.

In summary, the Carrier has established that the Claimants have been properly compensated at the straight time rate of pay for the service which they performed on Tuesday, September 7, 1954; that paragraph (c) of Rule 4-H-1 has been superseded; and that the Claimants are not entitled to the additional compensation which they claim for the service performed on Tuesday, September 7, 1954.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employes in this dispute would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that the Agreement does not provide for the compensation requested by the Claimants in this dispute.

It is respectfully submitted, therefore, that the claim here before your Honorable Board should be denied.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The issue in this case is similar to that in Award 8506 but Claimants here are monthly—rather than hourly—rated employes. As such they have been treated differently under Article II of the 1954 National Agreement. Section 2(a) of that Agreement says:

> "**Section 2(a).** Monthly rates, the hourly rates of which are predicated upon 169⅓ 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."

The effect of this provision is to give these monthly employes pay for all seven national holidays regardless of whether the holidays fall on workdays or rest days.

Here these monthly rated employes were paid for the holiday occurring on Labor Day, September 6, 1954, in accordance with Article II of the National Agreement. There is thus no basis for any additional compensation payable to them under that Agreement.

We have held, however, in Award 8506, that Rule 4-H-1 of the basic agreement between the parties on this property has not been abrogated or set aside by the National Agreement. Rule 4-H-1 makes no distinction between hourly—and monthly-rated employes. Accordingly, for the purposes of that rule, Claimants here were entitled to be paid time and one-half for work performed on the "shifted holiday" i.e., September 7, 1954. Instead they were paid at the pro rata rate. The claim, therefore, should be allowed only to the extent of the difference between the amounts representing the pro rata rate (already paid) and the time and one-half rate.

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 in accordance with Opinion, claim will be allowed for an amount representing the difference between payment for eight hours work at the pro rata rate and at the time and one-half rate; otherwise claim will be denied.

AWARD

Claim sustained and denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1958.