

Award No. 8539
Docket No. TE-8117

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RY.
(The New York Central R.R. Co., Lessee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Cleveland, Cincinnati, Chicago and St. Louis Railway, that,

1. Carrier violated the agreement between the parties hereto when it failed and refused to fill the 7-day positions on holidays, as follows:

Monday, May 31, 1954, Decoration Day:

Worthington, Indiana—first, second and third shifts.
Buckskin, Indiana—first, second and third shifts.
Ashby, Indiana—first and second shifts.
Lynville, Indiana—first, second and third shifts.
Taylor, Indiana—first and second shifts.

Monday, July 5, 1954, observed as Independence Day:

Worthington, Indiana—first, second and third shifts.
Taylor, Indiana—first and second shifts.

Monday, September 6, 1954, Labor Day:

Worthington, Indiana—first, second and third shifts.
Buckskin, Indiana—first, second and third shifts.
Ashby, Indiana—first and second shifts.
Lynville, Indiana—first, second and third shifts.
Taylor, Indiana—first and second shifts.

Thursday, November 25, 1954, Thanksgiving Day:

Worthington, Indiana—first, second and third shifts.
Buckskin, Indiana—first, second and third shifts.

Ashby, Indiana—first and second shifts.
 Lynville, Indiana—first, second and third shifts.
 Taylor, Indiana—first and second shifts.

Saturday, December 25, 1954, Christmas Day:

Buckskin, Indiana—first, second and third shifts.
 Lynville, Indiana—first, second and third shifts.
 Taylor, Indiana—first and second shifts.

Saturday, January 1, 1955, New Year's Day:

Buckskin, Indiana—first, second and third shifts.
 Lynville, Indiana—first, second and third shifts.
 Taylor, Indiana—first and second shifts.

2. The Carrier shall compensate each of the employes, occupants of the above listed positions, on the basis of eight (8) hours at the time and one-half rate, for each of the holidays, in addition to what they were paid, representing the time and pay lost by said occupants as a result of the Carrier's failure to fill their respective 7-day positions, as follows:

Monday, May 31, 1954, Decoration Day:

L. E. Gee, first shift, Worthington, Indiana
 R. H. Daubenspeck, second shift, Worthington, Indiana
 R. L. Abrell, third shift, Worthington, Indiana
 J. F. Kinscherff, first shift, Ashby, Indiana
 W. G. Ramsey, second shift, Ashby, Indiana
 H. H. Hochstettler, first shift, Buckskin, Indiana
 M. Wheeler, second shift, Buckskin, Indiana
 J. C. Dare, third shift, Buckskin, Indiana
 T. L. Shaw, first shift, Lynville, Indiana
 J. D. Ludwick, second shift, Lynville, Indiana
 E. B. Parker, third shift, Lynville, Indiana
 D. W. Deffendol, first shift, Taylor, Indiana
 P. R. Siefert, second shift, Taylor, Indiana

Monday, July 5, 1954, observed as Independence Day:

L. E. Gee, third shift, Worthington, Indiana
 A. G. O'Neil, second shift, Worthington, Indiana
 J. P. Reagin, third shift, Worthington, Indiana
 D. W. Deffendol, first shift, Taylor, Indiana
 E. L. Francis, second shift, Taylor, Indiana

Monday, September 16, 1954, Labor Day:

L. E. Gee, first shift, Worthington, Indiana
 A. G. O'Neil, second shift, Worthington, Indiana
 J. P. Reagin, third shift, Worthington, Indiana
 J. F. Kinscherff, first shift, Ashby, Indiana

R. H. Daubenspeck, second shift, Ashby, Indiana
 M. Wheeler, first shift, Buckskin, Indiana
 P. R. Siefert, second shift, Buckskin, Indiana
 J. C. Dare, third shift, Buckskin, Indiana
 D. W. Deffendol, first shift, Taylor, Indiana
 E. L. Francis, second shift, Taylor, Indiana
 H. H. Hochstettler, first shift, Lynville, Indiana
 J. D. Ludwick, second shift, Lynville, Indiana
 D. R. Moore, third shift, Lynville, Indiana

Thursday, November 25, 1954, Thanksgiving Day:

C. W. Summers, second shift, Worthington, Indiana
 J. P. Reagin, third shift, Worthington, Indiana
 J. F. Kinscherff, first shift, Ashby, Indiana
 W. G. Ramsey, second shift, Ashby, Indiana
 M. Wheeler, first shift, Buckskin, Indiana
 T. B. Myers, second shift, Buckskin, Indiana
 B. R. Denham, third shift, Buckskin, Indiana
 A. L. Miller, first shift, Lynville, Indiana
 J. D. Ludwick, second shift, Lynville, Indiana
 A. A. Woodard, third shift, Lynville, Indiana
 E. L. Francis, first shift, Taylor, Indiana
 P. R. Moore, third shift, Taylor, Indiana

Saturday, December 25, 1954, Christmas Day:

H. H. Hockstettler, first shift, Buckskin, Indiana
 T. B. Myers, second shift, Buckskin, Indiana
 J. C. Dare, third shift, Buckskin, Indiana
 A. L. Miller, first shift, Lynville, Indiana
 J. D. Ludwick, second shift, Lynville, Indiana
 N. R. Williams, third shift, Lynville, Indiana
 J. W. Lindley, first shift, Taylor, Indiana
 T. L. Shaw, second shift, Taylor, Indiana

Saturday, January 1, 1955, New Year's Day:

H. H. Hockstettler, first shift, Buckskin, Indiana
 J. W. Settlemaier, second shift, Buckskin, Indiana
 J. C. Dare, third shift, Buckskin, Indiana
 A. L. Miller, first shift, Lynville, Indiana
 J. D. Ludwick, second shift, Lynville, Indiana
 N. R. Williams, third shift, Lynville, Indiana
 J. W. Lindley, first shift, Taylor, Indiana
 T. L. Shaw, second shift, Taylor, Indiana

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties to this dispute are on file with this Division of your Board and by this reference are made a part hereof.

Worthy of repetition at this juncture is the language contained in Second Division Award No. 1606 hereinbefore mentioned—"in respect to working employes on holidays, the Carrier has two alternatives: It may work them, or it may not." Because of the controlling agreement rules and past practice, as set forth in this submission, the Carrier feels that an identical decision is apropos on the part of the Third Division in the instant case, i.e., the Carrier may work them on holidays, or it may not, and the claim of the employes should be denied.

All data set forth in this submission has been considered heretofore by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim filed on behalf of each of certain employes occupying seven-day positions for a day's pay at the time and one-half rate under the applicable rules of the basic Agreement; and, in addition, for a day's pay at the pro rata rate under the provisions of the August 21, 1954, National Agreement, Article II, less payment of eight hours at the pro rata rate already having been paid.

The six days involved in this dispute are all holidays each of which fell on the work days of the work week of the individual claimants. Apparently, because of a reduction in the number of trains being operated, some of the telegraph offices were closed for the day and others for certain shifts. In brief, the positions were "laid in" or blanked and claimants performed no work on these days but each was paid for an eight hour day at the pro rata rate of their respective positions.

Petitioner relies on Article 24 of the effective Agreement which reads as follows:

"ARTICLE 24

Guarantee

"Regularly assigned telegraphers will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on rest days on positions covered by Paragraph (d) of Article 21, or rest days and holidays on positions covered by Paragraphs (b) and (c) of Article 21.

"This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

Petitioner contends that the foregoing rule means that employes occupying seven-day positions are entitled to work every day except their assigned rest days, or be paid as if they had worked. It asserts, in effect, that additional payments made under other rules—such as the holiday pay provisions of Article II of the National Agreement of 1954—do not nullify this guarantee rule of the basic contract and that, therefore, these employes can and should be compensated under both rules.

Respondent contends that it has long been the practice on this property to pay laid-in seven day positions at the straight time rate on holidays where

no work was required or performed; that the National Agreement of 1954, Article II, was designed to insure the maintenance of take home pay for those employes on five- and 6-day positions who otherwise would lose a day's pay if the holiday fell on a work day of their work week; that seven-day employes already having been paid for holidays not worked under the basic agreement were not contemplated as beneficiaries under the new rule of the 1954 Agreement; that Article 24—the Guarantee Rule—does not prohibit Carrier from blanking positions on holidays if the occupants thereof are paid for 8 hours at the straight time rate.

From examination of the applicable contract rules, the facts and evidence of record, and the pertinent awards cited, we make the following findings and conclusions:

1. The parties are in dispute as to what extent seven day positions on this property were laid-in on holidays, and occupants paid at the pro rata rate, but a preponderance of the evidence supports Carrier's contention that such has been the practice in the past.

2. Article 11 of the 1954 Agreement was designed primarily to insure maintenance of weekly take home pay for those regularly-assigned hourly rated employes who prior to that time had lost a day's pay when the holiday fell on a work day of his work week.

3. Seven-day positions under the Guarantee Rule of the basic agreement here were paid for holidays whether worked or not.

4. There is nothing in the basic agreement or in the 1954 National Agreement that would prohibit the Carrier from blanking these positions on holidays provided payment for eight hours at the pro rata rate is made.

Furthermore, Article 23 of the basic agreement provides the only requirement for payment at the time and one-half rate when a 7-day employee **actually works** on a holiday. To attempt to read this requirement into Article 24 of the same contract is manifestly unsound under any principle of contract construction.

The only question remaining for decision is whether or not the Petitioner has correctly interpreted the provisions of Article II of the 1954 Agreement in conjunction with the rules of the basic agreement and as applied to the facts of record here. We have been referred to decisions of the New York Central Special Board of Adjustment No. 137, where similar contract language and the identical issue were presented. In Award No. 22 it was held:

"Carrier was within its rights in blanking the position and paying the claimants 8 hours pay account not required to work on their regularly assigned day, and paid claimants 8 hours at straight time pro rata rate. However, on this property, by previous settlements, the parties hereto had interpreted their rules to mean that in such circumstances as this the carrier would pay the claimant 8 hours at time and one-half rate instead of the pro rata rate. That having been the interpretation on this property, this Board is not disposed to disturb their own interpretation. Claimants here would be entitled not to 8 hours at pro rata rate but should have been paid 8 hours at time and one-half rate account not used on their regularly assigned day. (Emphasis added.)"

In the instant dispute we have heretofore held that it was the practice on this property to pay eight hours at the pro rata rate for holidays not worked. Again, in Award No. 51 of the same Board, the following language is significant:

"The Holiday Rule was to secure holidays without work for the employees but to pay time and one-half when they were required to work the holiday. The Holiday Rule did not change any of the other rules in the agreement, and employees on positions blanked on holidays are only rightfully entitled to straight time pay on such occasions."

These decisions are in point and considered dispositive of the issue. We, therefore, find and hold under the facts of record here presented that incumbents of 7-day positions not required to perform work on holidays are entitled to payment of eight hours at the pro rata rate. The claim must, therefore, be 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 20th day of November, 1958.