# Award No. 8762
# Docket No. CL-8104

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Carroll R. Daugherty, Referee**

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## PARTIES TO DISPUTE:

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

## ERIE RAILROAD COMPANY

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement and the Agreement of August 21, 1954 when it failed and refused to pay regularly-assigned employes for eight (8) hours at pro rata rate of pay for a holiday, Labor Day, September 6, 1954. Article II, Sections 1 and 3 of the Agreement of August 21, 1954 were violated as the employes named qualified for pay on such holiday by working the last workday of their preceding workweek and the day immediately following such holiday, and

That Carrier shall now compensate J. Applehans, D. Armand, J. Broneiz, A. Brazeau, R. Boswell, J. Cooke, O. Courtney, W. Culligan, C. Duggan, J. Frederico, A. Flowers, A. Grillo, C. Goode, W. Green, W. Harlan, W. Harvey, R. Hill, J. Hlubocky, L. Haske, J. Huss, W. F. Jackson, A. Jakubic, F. Lee, A. Lelko, R. Lyles, J. Lipinski, C. Macchario, T. Pichard, R. Reese, G. Rossof, O. Slaughter, P. Sonetz, W. Whavers, J. Yurik, J. Zielinski, and all other Freight House (assigned) forces at 14th Street, Chicago, Illinois, for eight (8) hours at pro rata rate for the holiday falling within their workweek. (Claim 1061.)

**EMPLOYES' STATEMENT OF FACTS:** The named employes, as set forth in Employes' Statement of Claim, are regularly-assigned employes under the formula set forth in Rule 23 of the Clerks' Agreement and are the regularly-established positions as referred to therein, holding positions bulletined, awarded and assigned under Rule 7 of the Clerks' Agreement.

In accordance with Memorandum of Agreement dated March 30, 1948, paragraph 3, thereof, these employes were permitted to accept temporary promotions to positions designated as additional positions or temporary vacancies without surrendering their regularly-established positions working during the same hours of their assignment. They were also permitted to work

Since the claimants were admittedly extra or additional force employes and since extra or additional force employes are not entitled to holiday pay, the claim must fail.

The Carrier further submits that in order to sustain this claim it would be necessary for the Board to indulge in speculation and conjecture and that so doing would have the effect of adding language to a contract otherwise clear and susceptible of but one meaning. The Board is not authorized to add to or detract from a contract or to place an interpretation thereon that would have that effect. Award 6291 makes these things clear. In the Award, the Board said:

> ". . . the Board is not authorized or permitted to revise or amend the governing rules of the Agreement. Nor can we speculate as to what the intention of the parties may have been when the Agreement was written. We are required in determining the rights of the parties to interpret the Regulations as they are written in the Agreement, and we have no authority to modify or amend the provisions in any way. This must be done only by negotiation between the parties. This has been held in numerous Awards by the Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board."

The Carrier has shown that under the applicable Agreement, particularly Article II, of the August 21, 1954 Agreement, the Claimants are not entitled to holiday pay which they claim.

The Carrier, therefore, submits that your Honorable Board should deny the claim in its entirety.

All data contained herein have been presented to or are known to the Petitioner.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier operates a freight platform facility at its 14th Street Station in Chicago. Here, under Rule 23 (a) of the controlling Agreement there were, as of claim date, two kinds of Roster "B" platform employes: (1) those on regularly "established" or "assigned" positions (the two quoted adjectives are used synonomously and interchangeably in the Rule); and (2) those known as "additional forces."

The number of regularly established Roster "B" positions was predetermined for each quarter by a formula contained in Rule 23 (a) 3. Under Rule 23 (b) assignments of employes to said positions were made in accordance with the bulletining provisions of Rule 7; and under Rule 23 (a) 3 the positions were subject to the guarantee provisions of Rule 28. The day operation for such positions at the Station was performed six days a week, the night seven days. In both day and night operations the work-weeks were staggered and without relief assignments.

Under Rule 23 (a) 4 and Rule 23 (c) the additional forces were set up to handle "fluctuating work over and above forces provided" in Rule 23 (a) 3. Employes composing the additional forces were required to "report regularly at a specified time at their place of employment for any available work and senior qualified employes so reporting will be used."

Under a Memorandum of Understanding dated March 30, 1948, (dealing with the application of the above-mentioned provisions of Rule 23), paragraph

3 below the heading, "Regularly Established Positions," provided that the regularly assigned Roster "B" employes were "permitted to fill in temporary vacancies or additional positions working during the same hours of their assignment" and also "to work on temporary vacancies or additional positions working other than their assigned hours by agreement between the Agent and the local Chairman."

It appears also that (1) when the Roster "B" employes exercised their seniorities to do additional force work, the regularly established positions which they left could be reclaimed, i.e., they could be bumped back into at any time by said employes; and (2) the vacancies created in said regular jobs by the incumbents' moving into additional force work were thus filled on a more or less temporary basis.

Claimants herein were part of Carrier's Roster "B" platform force at 14th Street during the third quarter of 1954. However, before and after the date of claim (Labor Day, 1954) they were not working in their regularly established "B" positions, having exercised their seniorities to do higher-paid "additional force" work. Petitioner states without contradiction that Claimants worked the day before and the day after said holiday and asks that each be given pro rata pay therefor, under Article II, Sections 1 and 3 of the National Agreement of August 21, 1954.

Sections 1 and 3 of Article II of said 1954 Agreement say that an employe is to receive eight hours pay at the pro rata hourly rate of the position to which assigned for Labor Day (and six other holidays) if (1) he is regularly assigned; (2) said holiday falls on a work day of his workweek; and (3) compensation paid by the Carrier is credited to his workday just before and his workday just after said holiday.

In substance, Petitioner contends that Claimants fulfilled all these conditions, while Carrier argues that they failed on the first, i.e., they were not regularly assigned on said holiday. Petitioner holds that Claimants must be considered regularly assigned on either of two grounds: (1) Because they were working on temporary positions on Labor Day (September 6, 1954) and because they had bid in to their regular Roster "B" positions and could bump back into them at any time, they were always regularly assigned to the latter positions. (2) They could also be considered to have been regularly assigned to the temporary or additional force work.

Carrier contends that each of the above-stated points of Petitioner is invalid. (1) The regularly established positions which Claimants voluntarily left in order to take the additional force work were not Claimants' regular assignments. They completely abandoned the conditions attaching to the Roster "B" positions in order to get the benefits of the additional force work. Their status on the Labor Day of 1954 is controlling, and they were then additional force employes. To get the benefits of the holiday pay provisions an employe must be regularly working on a position to which such benefits accrue. (2) Said benefits do not accrue to additional force work. The latter is a day-to-day affair, with no assigned workweeks or rest days and no guarantee.

The determination of the instant claim depends on whether Claimants, as of claim date, are found to have fulfilled all three of the conditions for holiday pay specified in Sections 1 and 3 of Article II of the August 21, 1954 Agreement. Information as to whether these conditions were fulfilled must come from the relevant provisions of the Parties' Agreements and from the material facts of record. Taking said conditions in reverse order, the Board

finds that the third one—paid work on the days before and after Labor Day, 1954—was fulfilled. Petitioner asserts and Carrier does not deny said fulfillment. As to the second—Labor Day must have fallen on workdays of Claimants' workweeks, the following is to be observed; (a) Carrier asserts, without denial by Petitioner, that Claimants were doing additional force work and not filling temporary vacancies in regular positions and therefore were working on a day-to-day basis, with no assigned workweeks or rest days. The Board finds that, given the fact of additional force work done by Claimants, the language of Rule 23 (c)—in the phrases "will report regularly" and "for any available work"—supports this contention of Carrier. (b) The record contains no evidence as to (i) what Claimants' workweeks and rest days on the additional force work were, if any, and (ii) whether Labor Day, 1954 came on a workday of Claimants' workweeks, if any. It must be concluded that Petitioner has failed to establish that Claimants fulfilled the second condition necessary for receiving Labor Day pay.

As to the previously stated first condition—Claimants must have been "regularly assigned" on Labor Day, 1954, the following questions require answers: (a) In the railroad industry in general, what constitutes a regularly assigned employe? (b) Under the Parties' Agreements in the instant case, what constitutes regularly established positions? (c) To what kind of work or positions were Claimants assigned just before and after Labor Day, 1954?

A "regularly assigned employe" may be defined as one who has been assigned to and holds tenure indefinitely (so long as it exists) on a regularly established position with regularly assigned hours and rate of pay (see Awards 2170 and 2297, Second Division, and Awards 7430 and 7432, Third Division).

Under the Parties' Agreements, particularly Rule 23 (a) 3 and 4, (b), and (c), the Roster "B" platform positions at Carrier's 14th Street Freight Station were clearly as of claim date, "regularly established positions." Assignments thereto were made under the regular bulletin-and-bid procedures and Rules; they had regular workweeks and rest days; and they were subject to the Guarantee Rule. But, by the language at the end of Rule 23 (a) 3 and contained in 23 (a) 4 and 23 (c), the additional force work at said platform could not be considered as involving regularly established positions.

The third question is thus crucial: What were Claimants' assignments just before and after Labor Day? The Board rules that Claimants may not be considered then to have had two assignments; it must have been one or the other of the two above-mentioned kinds of work. The evidence of record shows that (1) Claimants were actually doing additional force work on the dates in question; but (2) they could reclaim their regularly established Roster "B" positions at any time; and (3) the employes who were the incumbents of the latter positions on said dates were not the indefinite "owners" thereof. The Board finds that in spite of this special "ownership" arrangement Claimants were not, in the sense used in previous Awards of this Board, the holders or "owners" of regularly established positions on the dates in question. The very fact that they had to reclaim or re-establish their "ownerships" is persuasive of the conclusion that as of said dates they were not regularly assigned to the Roster "B" jobs.

It follows that on said dates Claimants were assigned to additional force work. And since the Board has found that said work does not constitute or belong to regularly established positions, it follows further that Claimants were not regularly assigned employes within the meaning of Section 1 of Article II of the National Agreement of August 21, 1954.

Inasmuch as the first and second conditions for receipt of holiday pay on September 6, 1954, were not properly fulfilled by Claimants, the Board must rule that their claim cannot be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 the Carrier did not violate the Parties' Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1959.