# Award No. 9337
# Docket No. MW-8342

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Carl R. Schedler, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it failed and refused to allow certain hourly rated employes eight hours' straight time pay for one or more of the following holidays, Decoration Day, Fourth of July and Labor Day in 1954.

(2) Each of the Claimants referred to in part (1) of this claim be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

(3) The amounts due each claimant be determined by a joint check of the Carrier's records.

NOTE: The claimants were identified in attachments to letters addressed to Division Engineers, Messrs. F. J. Hoffman and W. F. Smock, dated January 21, 1955 and January 22, 1955, respectively by General Chairman, Mr. J. P. Wilson.

EMPLOYES' STATEMENT OF FACTS: The Claimants referred to in Part (1) of our Statement of Claim were regularly assigned to hourly rated positions in their respective classes of service.

In 1954, each of the claimants received compensation credited by the carrier to the workdays of their respective workweeks immediately preceding and following one or more of the following Holidays; Decoration Day, Fourth of July and Labor Day.

On August 21, 1954, the parties consummated an agreement providing for eight hours' straight time for each of the seven designated holidays not worked, retroactive to May 1, 1954.

The Carrier has declined to allow each of the claimants eight hours' straight time pay for one or more of the aforementioned holidays.

holiday pay which they thought they were entitled to, the General Chairman assumed that great numbers of his constituents had been similarly affected, so to be sure he did not overlook any prospective claimants he filed claim in behalf of substantially every hourly rated employe in the Maintenance of Way Department. Presumably, the Employes reasoned that if the Carrier furnished evidence that specific claimants had been paid, or positive proof that specific claimants had not qualified, the Employes would eliminate such names from the list of 500, and consider the remaining claimants as being entitled to compensation claimed. This procedure would have the effect of shifting the burden of proof from the party who asserted the claim (the Employes) to the Carrier, in violation of principles recognized by the Awards cited above.

This is a problem that has plagued the Carrier in the past to a lesser degree where the Employes have named a dozen or so claimants without establishing facts as to the availability or the right of the claimants to claim the compensation sought. However, here the Carrier is being asked to investigate the circumstances in connection with more than 500 claimants which number would have been substantially reduced or perhaps eliminated entirely had the Employes made a reasonable effort to establish the facts while the claim was being handled on the property. Article 5 of the August 21, 1954 Agreement, the so-called time limit on claims rule, was designed to eliminate claims of the nature involving unnamed claimants. Apparently the Employes feel that by dispensing with the old phrase "each and every Maintenance of Way employe" and naming each and every Maintenance of Way employe they can successfully circumvent the literal meaning of the time limit rule if not the intent and purpose thereof.

This case comes before this Division because the Employes, without good cause, have filed claim in behalf of more than 500 claimants, without any proof or evidence other than the bare assertion that the claimants had not received compensation properly due them. The Carrier did not make an exhaustive study of the list of claimants, not only because of the magnitude of the task but primarily because a sample test indicated that the list was principally composed of individuals who were not entitled to the allowance claimed. Experience has shown us that in a situation of this kind, even when the Carrier has been able to convince the Employes that certain individuals of a group are not entitled to an allowance, the Employes generally follow the process of elimination theory and assume the remainder of the group are entitled to payment claimed.

In brief, the Carrier strenuously objects to the theory that an assertion on the part of the Employes, without any proof, will be deemed to be a fact until such time as the Carrier is able to produce probative evidence to the contrary. The Employes failed to support their claim in the handling of same on the property, which procedure is in violation of numerous awards of this Division and claim should be denied.

(Exhibits not reproduced)

**OPINION OF BOARD:** This is a claim for holiday pay by some 523 Claimants totaling about 1384 days. The Carrier responded to the original claim by stating that it believed the Claimants were not regularly assigned employes or otherwise failed to qualify under the terms of the Agreement, but asked the Organization to supply the names and locations of any employe who felt he had been improperly paid, together with specific dates, and further investigation of the circumstances in each case would be made, and the Organization would be advised of the results. Whereupon the Organization prepared and submitted to the Carrier a list of the 523 names, showing the

name of each individual, the location where he worked, and the holiday or holidays for which he claimed he had not received pay. The holidays listed are Memorial Day, Fourth of July, Labor Day and Thanksgiving Day. Some Claimants claimed pay for all four holidays while others claimed for a lesser number. The Organization asserted that all the employes listed had fully complied with all the qualifying provisions in the Agreement for holiday pay. The Carrier replied that the list of names submitted seemed to be all employes who performed any service after May 1, 1954, and that it was convinced from a spot check of the names that there was no merit in the claims.

It seems to us that it would have been a relatively simple matter to have checked the list of names against the payroll and determined accurately the status of each claim and to have so certified. A spot check for a monetary claim is inconclusive and fails to meet the issue squarely. This Board has in many previous Awards directed the parties to make a joint check of the payroll to ascertain if employes are entitled to compensation. See Awards 313, 316, 330 and 6415.

Since the record in this case does not contain the necessary information for the proper determination of the amounts due, if any, it is hereby ordered that representatives of the Carrier and Organization make a joint check of Carrier's records within thirty days of the date of this Award to ascertain if any of the claimants whose name appears on the list is entitled to holiday pay for the dates claimed, and that such payments due, if any, be made within thirty days thereafter.

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 if the Carrier has failed or refused to pay any of the Claimants holiday pay, who properly qualified for such pay, Claim should be sustained. That if any of the Claimants have been properly paid or did not qualify this Claim should be denied.

AWARD

Claim disposed of in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1960.