Award No. 10122
Docket No. CL-9934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES

INDIANA HARBOR BELT RAILROAD AND CHICAGO RIVER AND INDIANA RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement.

(a) When without conference or agreement with the Clerks' Committee, it required all employes on duty in the offices of the Superintendent of Freight Transportation, IHB Railroad at Gibson, Indiana and C.R.&I. Railroad at Chicago, Illinois to perform eight hours of service on Friday, December 30, 1955, and on Monday, December 31, 1956, and

(b) When in December, 1955, and December, 1956, the Carriers without conference or agreement with the Clerks' Committee refused to grant each employe in the offices of Superintendent of Freight Transportation, Gibson, Indiana and Chicago, Illinois a half day off without reduction in pay to do their Christmas shopping and

(c) That the Carriers shall now be required to restore these practices and that all schedule employes in the offices of Superintendent Freight Transportation Gibson, Indiana and Chicago, Illinois, required to perform eight hours of work on Friday, December 30, 1955 and on Monday, December 31, 1956 be compensated an additional half day's pay at proper punitive rate for each such employe and

(d) That all schedule employes in the offices of Superintendent of Freight Transportation, Gibson, Indiana and Chicago, Illinois who were on the payroll of these offices as of December 19, 1955, and December 19, 1956, be compensated an additional three hours and twenty-five minutes at proper punitive rate of each such employe.

EMPLOYES' STATEMENT OF FACTS: The employes covered by this claim are employed as Clerks in the offices of the Superintendent of Freight Transportation, Indiana Harbor Belt Railroad at Gibson, Indiana and the C.R.&I. Railroad at Chicago, Illinois.

tractually bound, and then refuses to enter into a Memorandum of Agreement on the policy when requested to do so by the Organization, it cannot be said that a binding oral agreement was reached, or that the continuation of the policy for nine years as in this case established a practice which the Carrier may not cancel."

CONCLUSION:

The Carriers have shown:

1. They are not required to entertain any claims unless the actual claimants are specifically identified.

2. The so-called practices lacked uniformity and were not applicable to all employes involved.

3. Rule 3 of the Agreement is unambiguous in that it requires 40 hours work per week.

4. No provision of the Agreement grants time off as requested by the employes.

5. The Organization is attempting to secure, through an award of this Division, an agreement provision over and above that which was agreed to by the parties.

Accordingly, the Carriers' request that the Organization's claim herein be denied in its entirety.

All data and arguments herein contained have been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims have been submitted and progressed by the General Committee of the Clerks organization as representative and on behalf of approximately 95 persons employed as Clerks in the offices of the Superintendent of Freight Transportation of the carriers at Gibson, Indiana, and Chicago, Illinois. The Statement of Claim describes the dates involved and the nature of the disputes.

The record reveals that since about 1931 until 1955, except as hereinafter noted, substantially all of the Clerks in said offices were allowed one-half day off with pay for Christmas shopping, between Thanksgiving Day and December 19 in each year, and were excused from work at 1:00 P.M. without pay deduction on the last work day preceding New Year's Day in each year. This arrangement was discontinued by the carriers in 1955 and 1956.

The organization maintains that this custom or practice of twenty-five years was the equivalent of an agreement rule and constituted a condition of claimants' employment and that therefore the carriers lacked authority to unilaterally terminate it.

The carriers take the position that these claims are defective in form because the claimant employes are not specifically named or identified as is said to be required by the language of Article V of the August 21, 1954 Agreement, and Rule 13 of the current Agreement. Rule 13 (1) (a) of the current Agreement of October 25, 1954, and Article V mentioned, provide that

"claims or grievances must be presented in writing by or on behalf of the employe involved" and each agreement also recognizes the right of organization representatives to file and prosecute claims and grievances for and on behalf of the employes they represent.

It will be noted that the language of the applicable agreements does not provide that the claimant must be specifically identified by name, but simply state that the claim or grievance must be presented in writing by or on behalf of the employe (or employes) involved. If the contracting parties intended that in all cases the claim or grievance must be presented in the name of each employe involved, it would have been a simple matter to have so stated. The fact that they do not categorically require each claimant or grievant to be named, implies that particularly in the case of a class or group claim, it is not essential that the claimants be individually named if they can otherwise be readily identified from the carrier's records. In Award 4821 we approved the procedure of filing a general claim where the question involved operated uniformly upon a class of employes readily ascertainable. The point has been raised in numerous cases, before and since the Agreement of August 21, 1954. While the Awards are not uniform we think the better view is that the claimants need not be specifically named so long as they are readily identifiable. See Awards 9205, 9248, 9333 and 9416. Examination of the carriers' records should readily disclose the identity of those employed as clerks in the offices and at the times covered by these claims. The objection to the form of the claim lacks support.

Other defenses raised by the carrier are that the alleged practices lacked uniformity in that they were not applicable to all employes involved; that the effective agreement requires 40 hours of work per week; that the effective Agreement does not grant the time off claimed; and that an additional rule is sought by Board Award.

If the Claims submitted do not rest upon an Agreement of the parties they, of course, must fail. The basic question is, was there such an agreement and if so, did it operate with reasonable uniformity on all or substantially all of the employes in the class?

In a significant number of Awards this Board has recognized and applied the principle that a practice once established continues in force until specifically abrogated by the parties, and where a contract is negotiated and existing practices are not rescinded or altered by its terms, such practices are enforceable to the same extent as the provisions of the contract itself, as though written therein. See Award 2436, 4104, 4493, 5082, 5150, 5167, 6011 and 6787, among others.

In this case the organization's assertion that time off for Christmas shopping and on part of the working day preceding New Year's Day was continuously allowed since 1931, is not seriously disputed. The carrier shows that its records are incomplete with respect to the entire period mentioned by the organization, but its records for ten consecutive years ended December 31, 1956, support the employes' position for that part of the time involved. In the absence of evidence to the contrary, it may reasonably be inferred that the practice shown by the carriers' records pre-existed.

In the ten-year period from December 31, 1945, to December 31, 1954, inclusive, the carriers' records disclose that on the last work day preceding New Year's Day, with one exception, approximately 90% of the employes in the class involved were granted time off with pay after working four hours

and thirty-five minutes. In no instance save one, were more than five employes required to work more than four hours and thirty-five minutes. In the case of the one exception on December 31, 1951, approximately one-half of these employes either worked a half-day or not at all and the others worked a full day. In the period mentioned, the number of employes in this class on and after December 31, 1947, averaged 96.

With respect to time off with pay for Christmas shopping, the carriers' records for the like period reveals that with the single exception of 1949, all employes in this group were allowed time off for such purpose. The failure to grant such time off in 1949 was protested by the organization and the practice was resumed in 1950. Collective bargaining agreements were negotiated in 1936, 1946 and 1949. None mentioned the practice involved.

In an exchange of correspondence in December, 1952 — February, 1953, between the Local Chairman and the Supervisor of Freight Transportation, the organization's representative sought "an agreement on the half-holidays and time off which we presently enjoy and have consistently enjoyed for a number of years." The carriers' representative declined the request on the ground that there was "no provision in the Agreement respecting any such alleged practice." From this premise the carriers argue that the organization's attempt evidences its recognition that there has never been an obligation on the carriers to grant time off on the days in question. The carrier misinterprets the situation. The Local Chairman sought to reduce to writing a long-established practice, which the representative of the carrier referred to as "such alleged practice" but did not deny it existed.

The record in this case amply supports the position of the employes and we are obliged to hold that the long-established practice has by mutual acquiescence been the equivalent of a formal agreement between the parties and not subject to alteration without negotiation.

In one day of a work week between Thanksgiving Day and December 19 in 1955 and in 1956, the Clerical employes in the offices of the Superintendent of Freight Transportation at Gibson, Indiana, and Chicago, Illinois, worked three hours and twenty-five minutes, which for each of them should have been time off with pay. On the last work day immediately preceding January 1, 1956, and January 1, 1957, said employes worked four hours which should have been time off with pay. In effect, they worked overtime on those occasions for which they should have been paid time and one-half, whereas they were paid pro-rata. They are entitled to be additionally paid at the rate of one-half their established rate for the time so worked. The identity of the employes involved in each year should be determined by a check of the carriers' records. With respect to the last work day preceding New Year's Day in the years involved, any employe who did not actually work the full day for any reason would not be entitled to such penalty payment.

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 the Agreement was violated.

AWARD

Claims sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1961.