Award No. 10166
Docket No. MW-9067

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it required Crossing Flagmen F. E. Simon, A. L. Mastin and E. J. Fagan at Cedar Rapids, Iowa to suspend work during and throughout their respective assigned work periods on January 2, 1956;

(2) Each of the Claimants referred to in Part (1) of this claim be allowed eight hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYE'S STATEMENT OF FACTS: The claimants, Messrs, F. E. Simon, A. L. Mastin and E. Fagan, were regularly assigned to the position of crossing flagman at Cedar Rapids, Iowa, under the supervision of the Carrier's Captain of Police, Mr. L. M. Stender. Each of the claimants were regularly assigned to a 40 hour work week, consisting of five days, eight hours each, with two consecutive days off in each seven.

Under date of December 28, 1955, the Carrier's Captain of Police issued the following instructions:

"Marion, Iowa
December 28, 1955
X-98

NOTICE: **ALL CROSSINGMEN & TOWERMEN**

All positions will be Blanked between 7:00 A. M., Monday, January 2nd and 7:00 A. M., Tuesday, January 3, 1956.

Be governed accordingly.

/s/ L. M. Stender
Captain of Police"

pertinent portion of Rule 24 (f) which the Employes contend was violated merely provides that:

> "* * * The hours of employes covered by this rule shall not be reduced below eight (8) per day for five (5) days per week."

The sum total of the above quoted portion of Rule 24(f) is 40 hours payment per week, not 40 hours work, and although the Carrier reduced the claimants' hours of work from 40 to 32 in the week in which the January 2, 1956 New Year's Day holiday occurred, the claimants received payment for:

> "* * * eight (8) per day for five (5) days per week."

It is the Carrier's position, therefore, that where the hours of the claimants were not reduced below 8 per day for 5 days per week, the Carrier has not violated the provisions of Rule 24(f) as alleged by the Employes, for the only way possible to violate Rule 24(f) would be by reducing the payment to the claimants **below:**

> "* * * eight (8) per day for five (5) days per week."

The Carrier could have equally as well blanked the claimant's position on a work day of their work week which was not a holiday and allow payment of 8 hours at the straight time rate for that day, which, plus the payment of 32 straight time hours for the other 4 days of their work week on which they worked, would fulfill the quarantee provided by Rule 24(f). Consequently the guarantee rule extends no further in work weeks in which a holiday occurs than in work weeks in which a holiday does not occur, particularly under the effective agreement which does not contain a rule which would prohibit the blanking of the claimants' positions. The Guarantee Rule (24(f)) is, therefore, no more or no less than a guarantee of 40 hours pay per week or:

> "* * * eight (8) per day for five (5) days per week."

to employes covered thereby.

The claim is entirely without merit and should be denied. All data contained herein has been made known to the Employes.

OPINION OF BOARD: This is a dispute between the Brotherhood of Maintenance of Way Employes and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

The dispute centers around Rule 24(f) upon which the Organization bases its case and which reads as follows:

> "(f) Positions not requiring continuous manual labor such as track, tunnel, bridge and highway crossing watchmen; flagmen at railway non-interlocked crossings; lamp men; pumpers; engine watchmen, steam shovel, pile driver, clam and ditcher watchmen; will be paid an hourly rate. **The hours of employes covered by this rule shall not be reduced below eight (8) per day for five (5) days per week.**"

It is conceded by both parties that the Claimants were given four days advance notice that they would not work on New Year's Day and they performed no services on that holiday, but they were allowed 8 hours of pay at

the pro rata rate of pay and they were paid for 8 hours per day for 5 days per week (see record pages 2-3 and 13).

It is axiomatic that words in an Agreement must be read in context, the Agreement must be read as a whole and given the interpretation that would be attached thereto by a reasonably intelligent person acquainted with the language of the Agreement. Certainly we cannot read into the Agreement something that is not there.

This Board has repeatedly held that unless the petitioner proves a claim and proves a definite violation of the Agreement that the award must be denied. See Awards 9565 and 9551.

It goes without saying that merely unsupported allegations do not constitute proof. See Awards 9783; 9261; 9222; 8065 and 6359.

Rule 24(f) does not mention the word "work" but rather it sets up a basis of compensation for Employes on certain positions and provides that they shall be paid for 8 hours a day for 5 days a week and that the working hours cannot be reduced below 8 hours per day for 5 days per week.

It is the contention of the Carrier that under the terms of the Agreement that if a Crossingman's services were not required on a holiday that the Carrier may instruct him not to report for duty on that day and so long as the Carrier pays him for 8 hours a day for 5 days a week that is the intent of the Agreement.

We have attempted to follow the reasoning of the Employes and we cannot feel that their position can be possibly sustained in view of the Agreement itself and in view of the awards in connection with the construction of the Agreement.

One of the most capable Referees to serve of this Board was Referee Carter, who is Chief Justice of the Supereme Court of Nebraska and a very learned and wise man. He held in Second Division Award 2325:

> "It was clearly the intention of Emergency Board No. 106 and the Agreement of August 21, 1954, to provide that the regular assigned employes' take home pay in a work week containing a holiday which was blanked should be the same as a week in which there was no holiday. The agreement cannot reasonably be construed otherwise. We think the agreement provides for pay for 40 hours at the pro rate rate in a work week contained a holiday which is not worked, leaving the time and one-half rate to be applied in addition thereto if the employe is worked on the holiday. * * *"

If we were to follow the position of the complainants we would be paying time and one-half when no work was done at all. This is not the intention of the Agreement. These men lost no money. If they had lost any money at all certainly this Board would have sustained the award but under the terms of the Agreement they were granted 8 hours a day for 5 days a week and they were paid for this even though they did not work on New Year's day.

Awards 8539 and 9577 are controlling in this case and the claim must be denied.

It is now settled by the Opinions of this Board that an ordinary daily or weekly guarantee rule and Article II of the 1954 National Agreement do not create two distinct allowances, thereby doubling or even tripling the income of the Employe on holidays not worked. Under the terms of the Agreement and under the awards these claims are 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 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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1961.