# Award No. 10541
# Docket No. TE-9409

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

**Phillip G. Sheridan, Referee**

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## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## NEW YORK CENTRAL RAILROAD — SOUTHERN DISTRICT

**STATEMENT OF CLAIM:** Claim of the General Committee on the Cleveland, Cincinnati, Chicago St. Louis Railway, that:

1. Carrier violated Article 23 of the Agreement in failing to compensate G. C. Chance and G. R. Bandy, Jr., for an additional 8 hours at time and one-half rate for time worked on holiday, Monday, September 3, 1956.

2. Carrier shall now compensate G. C. Chance and G. R. Bandy, Jr., for an additional 8 hours at time and one-half rate for September 3, 1956.

**EMPLOYES' STATEMENT OF FACTS:** The claimants in this claim are both regularly assigned employes; Mr. G. C. Chance, is the first trick agent and operator at Mauds, Ohio, and Mr. G. R. Bandy, Jr. is the second trick operator at Sharon Yard, Ohio. Mr. Chance, while occupying the position of agent and operator at Mauds had a work week of Tuesday through Monday with Sunday and Monday as his assigned rest days. Mr. Bandy had a work week of Wednesday through Tuesday with Monday and Tuesday as his assigned rest days. Both claimants in their work weeks preceding the holiday Monday, September 3, Labor Day, had worked the five work days of their work week and both claimants were required by the Carrier to perform work on their assignments on their rest day, September 3. Both claimants filed time slips for the work performed on September 3. Claim for each was made for 8 hours at time and one-half for the compensation due under the rest day rule as well as 8 hours at time and one-half for the compensation due under Article 23, the Holiday Rule. Carrier compensated both claimants for eight hours at time and one-half under Article 22 but both claim were declined for the compensation due under Article 23.

The claims were appealed to the highest officer designated by the Carrier to handle claims and declined by him. This dispute is now properly before your Board for adjudication.

**presumed that all such matters were considered and incorporated in or left out of the agreement** to the extent that the written contract shows. **The integrity of written agreements requires that they be so construed."** (Emphasis added)

Finally, this Carrier holds that interpretations that are unrealistic or even absurd, fantastic, cannot prevail. Instead interpretations that are sensible must govern, with which the Third Division has indicated its agreement, witness decisions of that Board in Awards 7166, 6872, 6856, 6723, and others — all holding that sensible interpretation must prevail.

Carrier requests that this — representing what could be the beginning of similar nuisance cases — be disposed of by a denial award.

SUMMATION:

Carrier has shown:

That governing rules of the schedule agreement do not provide payment as sought.

That Article 7 — Overtime Rule — expressly prohibits "overtime on overtime."

That payment sought represents an attempt to secure a penalty by placing an interpretation on rules contrary to their unambiguous meaning.

For the above reasons Carrier requests that the Board render a denial award in this case, and thus put an end to further such nuisance claims which no doubt would otherwise arise in the future.

**OPINION OF BOARD:** The Claimants were required pursuant to a request of the Carrier to work on their assigned rest day which was also a holiday. The Carrier paid them time and one-half for the rest day for a period of eight hours but refused to pay them time and one-half for the holiday for a period of eight hours.

The holiday in issue is Labor Day, September 3, 1956.

The Organization in support of their position urge the provisions of Article 23 of the Agreement.

"ARTICLE 23. Holiday Work

"I — Time worked on the following holidays, namely:

"New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

"(provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered

the holiday), within the hours of the regular weekday assignment, shall be paid for on the following bases:

"(A) (1) Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight (8) hours whether the required holiday service is on their regular positions or on other work.

"(2) When a position is regularly required on Sunday to work more than three (3) hours or two (2) or more tours of duty, the position shall be considered in the same category as those referred to in paragraph (A) (1).

"(3) In offices and towers where more than three employees covered by this agreement and of the same classification are on duty on the same shift Monday through Friday, and for the sole purpose of applying paragraph (A) (1). All employees having rest days other than Saturday and Sunday shall be covered by paragraph (A) (1), unless other wise agreed between the carrier and the representative of the employees.

"(B) Employees, other than those covered by paragraph (A) above, shall be paid at the rate of time and one-half with a minimum of three (3) hours for each tour of duty.

"(1) When a position is regularly required to work three (3) hours or less on holidays, but occasionally is required to work more than three (3) hours on holidays, the employee occupying such position shall be paid at the rate of time and one-half on the minute basis up to four (4) consecutive hours, and if worked in excess of four (4) consecutive hours the employee shall be paid eight (8) hours at the rate of time and one-half.

"(2) When a position is regularly required on holidays to work more than three (3) hours or two (2) or more tours of duty, the assignment on holidays shall be deemed to be a full day assignment and entitle the employee to compensation at the rate of time and one-half with a minimum of eight (8) hours.

"II — Time worked on the holidays specified in I above, before or after the hours of the regular weekday assignment (sic), shall be paid for in accordance with the overtime or call provisions of Article 7."

The Carrier urges the provisions of Article 7 in denying their claim which states . . . "There shall be no overtime on overtime . . ."

We do not believe that the Article quoted by the Carrier supports their position. The Employes are not seeking overtime on overtime. They are seeking compensation pursuant to the provision of Article 22 which provides for overtime on their rest day, and for overtime which is provided by the terms of Article 23 i.e. worked performed on a holiday.

It is coincidental that the rest day and holiday occurred on the same day, but there are no exceptions to these articles, the payment for such work is provided in the Agreement.

The Claimants herein were seeking compensation pursuant to the terms of two specific articles, relative to two specific employment situations.

**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 has been violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1962.

**CARRIER MEMBERS' DISSENT TO AWARD 10541**
**DOCKET TE-9409**

The majority is in error in the above award because it fails to give any consideration to the provision of the "overtime on overtime" prohibition. It is in error because it states that:

> "The Claimants herein were seeking compensation pursuant to the terms of two specific articles, **relative to two specific employment situations.**" (Emphasis ours)

Let us first review the facts in this docket. The Claimants worked on a rest day which was also a holiday. They worked on **one day** and in **one employment activity.** There was only **one activity** — i.e., working for eight hours on that day. It was also the sixth day of their work week — it was also in excess of forty hours in their work week, each of which calls for the overtime rate. However, it is still **one activity.** The Petitioner did not request a separate day at time and one-half for working the sixth day, nor for working in excess of forty hours. Obviously, they realized that such duplication of payments for one and the same activity were not intended by the parties but in fact were proscribed by the language of the contract.

It is now apparent that the Majority was mislead by the Agreement that a regularly assigned employe will receive both a holiday and a day at time and one-half if he works on a regular work day that is also a holiday. However, this example really clarifies the distinction we are making, because there are **two activities** which are being paid for in that instance. The

one is the mere occurrence of the holiday on an employe's regular work day. As long as an employe fulfills the qualifications requirements, he will receive the holiday. The second activity concerns his use on a holiday. Where the Agreement provides, he will receive time and one-half if he works. However, this is a **second activity.** He is doing something other than what he was doing in the first instance, i.e., **he is working.** In the instant docket, **it is one and the same employment activity — working on a holiday which is also a rest day.**

In this connection, the Majority states as follows:

> "It is coincidental that the rest day and holiday occurred on the same day, but there are no exceptions to these articles, the payment for such work is provided in the Agreement."

The Carrier has not agreed to pay **double penalties for coincidental happenings.** The Carrier agreed to pay time and one-half for a rest day. It paid time and one-half. The Carrier agreed to pay time and one-half for a holiday when worked. It paid time and one-half. However, the Carrier **did not agree to make duplicate payments when the days coincidentally fell on the same date.**

There is no evidence either from the Agreement or from the practice on the property that Carrier ever made duplicate payments under such circumstances. There is no evidence the Petitioner ever requested duplicate payments. This fact is significant because the rules involved have been in existence since 1949 and applied in the manner now contended for by Carrier since that time.

Analogous to this case is **Award 9577** (H. A. Johnson). In that case the Agreement contained a weekly guarantee of five days and claim was made for an additional day's pay for a holiday not worked under Article II of the August 21, 1954 National Agreement. The Carrier paid the employe a day's pay for the holiday and this payment satisfied the guarantee rule as well as Article II, viz., —

> "The claim is that the Carrier violated Article II of the August 21, 1954 Agreement when it failed and refused to allow Terminal Division Bridge and Building Foremen eight hours pay for Washington's Birthday, February 22, 1955.
>
> "In its denial of the claim on the property the Carrier agreed that they were entitled to holiday pay under the August 21, 1954 Agreement, but denied the claim on the ground that they had already received it, as shown by payrolls for two of them. But the Employes contend that such pay merely complied with Special Rule 1 on pages 42 and 43 of the basic Agreement relating to Claimants. It provides as follows:
>
> 'Work Week Guarantee
>
> 'There will be no deduction in the compensation of Bridge and Building Foremen on account of crews working less than eight (8) hours per day for five (5) days per week.'

"The parties agree that Special Rule 1 is not a Holiday Rule, but merely a Work Week Guarantee Rule, as indicated by its title. It guarantees that if for any reason their crews work less than eight hours per day or five days per week the foremen shall nevertheless receive pay on that basis. In other words, if during any week, because of a holiday, weather conditions, or any other circumstances, their crews do not work the full 40 hours, the foremen are guaranteed payment as if they did.

"The contention is that since the August 21, 1954 Agreement provided for holiday pay without excepting the Foremen, who under Special Rule 1 were already receiving pay for certain days not worked, including holidays during their regular assignments, they were entitled to holiday pay twice — once under each Agreement, and that therefore the 1954 Agreement was violated.

"A guarantee is somewhat different from the ordinary holiday pay provision, although from the employe's point of view the result is the same. But even if the holiday phase of Special Rule 1 is regarded as equivalent to a holiday pay rule, which it is in final effect, the 1954 Agreement does not authorize duplicate holiday pay. The situation is simply this: by Special Rule 1 the Carrier guaranteed the Claimants, or in effect agreed to pay them, holiday pay; by the 1954 Agreement Carrier agreed to give all employes holiday pay. Thus there are now two separate Rules providing that these Claimants are entitled to receive holiday pay; but both rules are obeyed when Claimants receive holiday pay once; neither rule provides for duplicate holiday pay and all the rules must be considered together.

"A general rule extending to all a benefit already given a few does not ordinarily need qualifications or exception. Certainly there is nothing in the 1954 Agreement suggesting an intention to grant a second holiday payment for a holiday not worked to employes already entitled to holiday pay under an earlier rule.

"The basic Agreement and all supplemental Agreements are to be construed together, and it seems clear that in paying each of Claimants one day's holiday pay the Carrier was complying with the Holiday Rule and the Work Week Guarantee Rule. Consequently there has been no violation of the August 21, 1954 Agreement."

To the same effect are **Awards 10166** (Gray) and **10594** (Hall) which held that a payment made pursuant to one rule satisfied the Agreement and denied claims for the same type of payment under another rule.

**First Division Award 11634** (Scott) was a case where a conductor and trainmen were paid a call and release (100 miles) under the applicable rule and claim was made for a similar payment under the held-away-from-home terminal rule. In denying the claim for the additional payment, it was held, —

"The rules do not contemplate payments at the same time under both the 'Held away from Home Terminal' rules and the 'Called and Released' rules. Had these claimants been required to perform service, if only for a few minutes, for which the minimum

day's pay would have been allowed, then their continuous service under the 'Held Away From Home Terminal' rules would have been broken and the time would have again commenced to accrue upon the completion of said service.

"Payment simultaneously for the service of the same employe under two distinct rules, or, as the Carrier contends, two days' pay for one day's work, or as in the instant case for no work, must be clearly 'spelled out' in the Rules of the Agreement involved. The rules of the Schedules of the Conductors and the Trainmen with this Carrier fail to so provide. See Award No. 5396 (Docket No. 7663).

"The Finding of this Division in Award No. 11547 (Docket No. 21262) with Referee Spencer participating to the effect that 'the allowance provided for in Rule 56 (b) (as quoted) is compensation for work done' is adopted here with the comment that same is work constructively performed under the rule.

"In further support hereof reference is made to Award No. 9114 (Docket No. 17979), without Referee participating."

**First Division Award 12632** (Blattner) was a case where an attempt was made to collect like payments for the same service under two different rules. In denying the claim for the additional payment, it was held, —

"Even after the Carrier stated in a letter to the Chairman that they could find no rule justifying this additional payment, the employes mentioned no rule. The Carrier claims that the movement is governed by Article 29 which provides that when an engineer runs an engine light to and from train he will be allowed mileage if for more than one mile. We see no special circumstances in the instant case that would cause us to fly in the face of the position so often taken by this Division that except in exceptional circumstances it will not award a second day's pay for one day's work."

**Award 3146** (Carter), denied a claim where an attempt was made to collect a second like payment to one already made, viz., —

"In this connection, it might be well to state that Claimant was paid for the first four hours of service at the time and one-half rate as work performed on his rest day. He cannot now say that it was work performed on the day of his regular eight hour assignment and, therefore, not work performed on his rest day, in order to bring himself within some other rule that would permit the collection of an additional penalty. Time worked cannot be in one twenty-four hour period for the purpose of collecting a penalty under one rule and in another twenty-four period for the purpose of collecting an additional penalty under a different rule. Award 3094. Claimant having been compensated for the first four hours worked immediately ahead of his regular eight hour assignment at the time and one-half rate as work performed on his rest day, he is in no position to assert that he worked twelve hours on the day of his regularly assigned eight hours and no basis exists for an affirmative award on his present claim."

The same is true in **Award 3780** (Swain), wherein it was held, —

> "To permit the claimant here to collect time and one-half for the hours worked in his regular assignment would be in effect permitting him to claim two penalty payments on the eight hours relief work he did, one, on the theory that it was work performed outside of his regular hours of duty and, two, that it was work performed in excess of eight hours. This would be in equitable, and we know of no award which has so interpreted any similar agreement."

In **Award 8057** (Guthrie), we were faced with a **factual** situation exactly like the instant case, wherein the Claimant was used on his first rest day, in two successive weeks, and in both weeks the holiday coincided with his rest day. Claimant was paid one eight-hour day at the time and one-half rate for working on the holiday. He **claimed,** not another day at time and one-half rate under the Rest Day rule, but another day under the Holiday Agreement on the premise that because he ordinarily worked on his rest day it became a regularly assigned work day and the holiday thus fell on a regular work day. The same rules were contained in the Agreement involved in **Award 8057,** as in the instant case. Yet the Petitioner in **Award 8057** advanced no argument nor did they request two day's pay at the time and one-half rate.

This Division has consistently refused attempts to pyramid or collect double penalty payments through a simultaneous application of different rules to the same factual situation. See among others, **Awards 2695, 5473, 7370** (Carter), **2859** (Youngdahl), **4151** (Robertson), **4710** (Connell), **5423, 6021, 6750** (Parker), **5548** (Elson), **8004** (Bailer), **8013** (Cluster) and **8033** (Guthrie). This claim is nothing short of an attempt to collect double penalty payment, something neither provided for, intended nor contemplated by the Agreement and something which the Division has consistently refused to award.

For the reasons stated, Award 10541 is in palpable error. It misconstrues **one employment activity** as **two employment situations.** It was from this fallacious premise that the erroneous conclusion was reached.

**/s/ R. E. Black**

**/s/ O. B. Sayers**

**/s/ R. A. De Rossett**

**/s/ W. F. Eukers**

**/s/ G. L. Naylor**