# Award No. 11041
# Docket No. CL-10852

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Robert O. Boyd, 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 at Cleveland, Ohio, when it failed to compensate Mr. R. Barny, a monthly-rated employe, for the holiday (Christmas) December 25, 1957, and

That the Carrier shall now compensate employe Barny one day's pay erroneously deducted from his December, 1957 salary. [Claim #1197]

**EMPLOYES' STATEMENT OF FACTS:** Employe Barny is a monthly-rated employe whose monthly salary comprehends 1/12th of his annual salary, which was adjusted, effective May 1, 1954 to include seven (7) paid holidays, by adding the equivalent of 56 pro rata hours to his annual rate, and works in the office of the Auditor of Revenues.

Employe Barny requested and was granted permission by the Carrier to be absent from work on December 23, 24, 26 and 27, 1957, charging December 23rd and 24th absences against his 1957 vacation allotment and to have two days' pay deducted from his December, 1957 salary to cover December 26th and 27th, 1957 absences.

Employe Barny did not report for work December 23rd and 24th, 1957; the Carrier charged the two days' absences against vacation due and thereby exhausted Employe Barny's 1957 vacation allotment.

The office in which employe Barny's position is located was closed December 25, 1957 account holiday. (Christmas)

Employe Barny did not report for work December 26th and 27th, 1957, the two days following the holiday, and the Carrier deducted three (3) days' pay from his December, 1957 monthly salary, although Mr. Barny had requested two (2) days off without pay to cover absences on December 26th and 27th, 1957.

This claim was handled in the usual order of progression up to and including the highest officer designated for handling employe matters. Employes Exhibit "A". Claim was handled at conference on August 6th and Carrier denied the claim on August 26, 1958, Employes Exhibit "B". Claim is now before this Board for disposition.

one where the Organization is urging this Board to do the precise thing which the Organization says the Board has no authority to do, that is, "rewrite the Agreement." Based upon the facts and rules here involved, the Carrier submits that a denial Award is the only Award that can issue without the Board exceeding its authority. In other words, a denial Award would simply leave the parties where they have placed themselves by Agreement.

At the bottom of p. 7 and top of p. 8, the Organization cites Awards 7136, 7134 and 7294 to support argument not raised at any time, but in no event material to this dispute. None of the cited Awards has application to the matter here in question.

In the first full paragraph of p. 8, the Organization says:

> "The Agreement is clear that it was the intent to accord to monthly rated employes seven (7) paid holidays without any strings attached."

Here again the Organization is urging this Board to believe that the incumbent of a monthly rated position is in some unexplained manner entitled to receive seven paid holidays each year irrespective that such employe may not perform any service for the Carrier. The difficulty with the quoted assertion is that it is without foundation under the Agreement. Such unsupported assertion is typical in every situation where, such as here, an attempt is made to circumvent the Agreement.

In Award 8057, the Board held:

> "Since the Board does not possess equity powers, the claim must stand or fall upon the construction of the rules of the Agreement. In the instant case the rules do not support the claim."

There the rules did not support the claim and it was, therefore, denied. That is the exact situation here and the claim herein should be denied.

**OPINION OF BOARD:** The Claimant held a monthly rated position the compensation for which had been adjusted pursuant to Section 2(a) of Article II of the August 21, 1954, National Agreement, by adding the equivalent of 56 pro rata hours thereto to cover pay for seven holidays. On December 16, 1957, the Claimant requested that he be absent without pay on December 20, 1957, that he take the remaining days of his vacation, due him, on December 23 and 24, and that he be absent without pay on December 26 and 27. The requests were granted. The office where Claimant worked was closed on December 25, Christmas, one of the enumerated paid holidays. In computing Claimant's pay for the period December 16 to 31, the Carrier deducted 4/261st of his annual rate. The claim is for one day's pay account of erroneously deducting such for the Holiday.

When the seven paid holiday agreement was entered into the parties provided for the monthly rated employes, whose hourly rates were predicated on 169⅓ hours per month, by adding the equivalent of 56 pro rata hours to the annual compensation. (Rule 30-2) The daily rate is determined by dividing the annual rate by 261 and this factor is used for deducting daily pay when time off without pay is allowed. [Rule 33(b)

and (c)]. There is no provision in the rule requiring monthly rated employes to qualify for holiday pay as such, as applies to the hourly and daily rated employes [Rule 30-2 (b) and (e)]. The factor 261 is derived by subtracting from 365 the 104 rest days in a year. The result is a total of all work days plus 7 holidays. Thus, when 1/261 of the annual pay is deducted for a day off without pay it includes a portion of the amount allowed monthly rated employes for the 7 paid holidays. There is no provision in the agreement permitting the deduction, as such, of the pay of a holiday when not worked. We conclude, therefore, that the provisions of the agreement do not support the action of the Carrier in deducting 1/261 of his annual rate for a holiday (Christmas) and therefore the claim should be allowed.

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

That the parties waived oral hearing;

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.