Award No. 11079
Docket No. SG-9732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Terminal Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement when it blanked certain signal maintenance positions at the Kansas City Terminal on May 30, 1956, namely: Signal Maintainer, First Trick Main Line Automatics, Tower #8, assignee Ray Wilhelm; Signal Maintainer, First Trick Tower #3, assignee Elmer Dollard; Assistant Signal Maintainer First Trick Tower #5, assignee Robert Myers; Assistant Signal Maintainer, Second Trick Tower #5, assignee Forrest Miller.

(b) The Carrier now pay Signal Maintainers Ray Wilhelm and Elmer Dollard eight (8) hours at their respective overtime rates for May 30, 1956, account not being allowed to fill their regular bulletined assignments.

(c) The Carrier now pay Assistant Signal Maintainers Robert Myers and Forrest Miller eight (8) hours at their respective overtime rates for May 30, 1956, account not being allowed to fill their regular bulletined assignments.

EMPLOYES' STATEMENT OF FACTS: The claimants in this dispute are regular assigned signal maintenance employes in the Kansas City Terminal.

Ray Wilhelm, is employed as Signal Maintainer, Tower #8, Main Line Automatics. His regular days off-duty as specified by bulletin are Thursday and Friday, and his hours of service are from 7:00 A. M. to 3:00 P. M. The position is a seven-day assignment and is filled by a relief man on Thursday and Friday. The bulletin covering the position held by Wilhelm is reproduced and attached hereto and identified as Brotherhood's Exhibit No. 1. Wilhelm acquired this position by exercising his seniority over a junior man.

"There is nothing in the agreement which requires the Carrier to work regularly assigned employes on holidays when their services are not needed.

"The purpose of the holiday rule was to give a regularly assigned employe a holiday without a loss of take-home pay. Such was realized here."

Comparing the facts of this case, including the fact that each of the claimants here received a day's pay under the terms of Article II, Section 1, to those of Award 2070 it is clear that the Carrier has abided by all the provisions of the August 21, 1954 Agreement and, further, the rules of the Forty-Hour Week Agreement relied upon by the Organization do nothing to sustain their position.

Again your Board's attention is directed to the fact that Referee Douglas' findings were reaffirmed by your Board's Award 7294.

From all the foregoing it is apparent that all the issues presented in this dispute have been previously decided by both your Board and other divisions of the National Railroad Adjustment Board. And decided in such a manner as to lead to a denial of the Organization's claim.

It is noted that parts (b) and (c) of the Organization's Statement of Claim requests that the claimants be reimbursed ". . . at their respective overtime rates for May 30, 1956 . . ." Even if the claims were sustained, and nothing has been presented to the Carrier to justify that decision, the claimants would only be entitled to recover at the straight time rates in accord with the well settled principle of your Board that the punitive rate will not be paid for time not actually worked (See your Awards 3504 and 4224).

The Carrier's granting the claimants a day of leisure on the holiday is an accepted item of public policy and one that is underwritten by organized labor (See your Award 312).

In the light of all the facts and all the circumstances it is clear that the claim in this dispute is not supported by the Agreement, is without merit and should be denied in its entirety.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: Two of the Claimants are Signal Maintainers at Carrier's Kansas City Terminal, which positions are seven days a week assignments with two relief days. The other two Claimants are Assistant Signal Maintainers at the same terminal; and, it appears from the record that these two positions are five days a week assignments. On May 21, 1956, Carrier issued a notice blanking all four positions on legal holidays. Pursuant to this notice Claimants did not work their respective positions on May 30, 1956, a legal holiday. The Claim prays that each Claimant be awarded eight hours pay at their respective overtime rates for May 30, 1956.

In support of the Claim, Petitioner argues that: (1) in the past the four positions worked on holidays; (2) the Railroad was in operation on May 30, 1956; (3) the signal system was in operation; (4) there was main-

tenance work that could or should have been done on the signal system; (5) Carrier violated Article 2, Rule 3 of the Agreement, as supplemented, which, **inter alia**, provides for a forty hours workweek — which Petitioner, in effect, interprets as being a guarantee of forty hours per week; and (6) Carrier is bound to work bulletined seven days a week positions on holidays.

The issue is whether Carrier is estopped from blanking a five or seven days position on a holiday which falls within the regularly assigned workweek.

Rule 10 of the Agreement provides that the observance of holidays "will not be regarded as reducing the regularly established working hours or days." This disposes of the issue concerning the forty-hour workweek.

We turn to **Article II — Holidays** of the National Agreement of August 21, 1954, to which Petitioner and Carrier are parties. The genesis of this Article is set forth, at length, in **Second Division Award No. 2070.** Suffice to say, it makes clear that the objective of the Article is to permit the employes to enjoy holidays, free from work, without diminution of wages. It was not designed to increase wages; nor, was it designed to compel Carriers to work employes on holidays — quite the contrary being so, as emphasized by the representatives of the various organizations who testified before Emergency Board No. 106.

Under the Agreements, herein referred to, management retained its prerogative to determine the positions to be worked on holidays. Whether a position had been worked on prior holidays does not effect the exercise of the prerogative.

Whether there was work that could or should have been done on May 30, 1956, is immaterial in the absence of Carrier being contractually obligated to have the work performed — this record reveals no such obligation.

The responsibilities and the liabilities attached to Carrier's exercise of its discretion as to what work is to be done and when it is to be done are vested, solely, in Carrier, absent legal or contractual obligation. This Board may not substitute its judgment for Carrier's.

Upon the basis of the foregoing reasons and conclusions we will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.