Award No. 11642
Docket No. TE-10274

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated provisions of Article 2, August 21, 1954 Agreement between the parties hereto, when it failed and refused to pay Charles Fox for eight (8) hours, at the pro rata rate, of his position (Towerman-Telephoner — 10:45 P. M. to 6:45 A. M. — Bethlehem, Pa.) for designated holiday, i.e., Christmas Day, December 25, 1956.

2. Carrier shall be required to compensate Charles Fox for eight (8) hours at the pro rata rate of his position as paid holiday for Christmas Day, December 25, 1956, in addition to compensation paid for services rendered on such date.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect various collective bargaining agreements between the Lehigh Valley Railroad Company, hereinafter called Carrier or Management, and The Order of Railroad Telegraphers, hereinafter called Employes or Telegraphers. Such agreements are on file with this Division and by reference are made a part of this submission as though set out herein word for word.

This dispute was handled in the usual manner through the highest officer designated by the carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining agreement and is, under the Railway Labor Act, as amended, submitted to this Division for award, the Board having jurisdiction of the parties and the subject matter.

The dispute submitted herein involves interpretation of Article II (Holidays), August 21, 1954 Agreement. The two pertinent sections are Section 1, reading as follows:

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enu-

It is obvious, therefore, that claimant did not qualify for the holiday pay as required by the rule in this case and, accordingly, such claim was denied on the property.

It was the contention of the Organization in this case as discussed on the property that if compensation paid by the Carrier is credited to the work days of a regularly assigned hourly or daily rated employe's position immediately preceding and following one of the specified holidays, then the regularly assigned employe is entitled to the holiday pay as outlined in Article II, Section 1, even though on one or both the qualifying days the regularly assigned employe is voluntarily absent from work with no compensation due him and his position is filled by an extra or relief employe. It is elementary that if the employe regularly assigned hourly or daily rated referred to in Article II, Sections 1 and 3 of the August 21, 1954 agreement is voluntarily absent on a work day of his position, he is not entitled to have compensation credited for such a day of absence. There is no dispute between the parties the claimant in this case was voluntarily absent without compensation December 28, 1956. That day was the work day of claimant's position immediately following Christmas Day, 1956. As he had no compensation credited to him for that day, he did not qualify for the holiday pay claimed in this case.

The article involved is not difficult to interpret. As a matter of fact, the language is quite simple — to the effect that in order to qualify for the claimed holiday pay, the employe must have compensation credited to him for the work day preceding the holiday, as well as the first work day following such holiday. In the instant case that was December 28, 1956, and claimant did not work on that day nor was any compensation credited to him for that day.

The claim herein should be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case contains a stipulation of the facts.

The issue is interpretation and application of ARTICLE II — HOLIDAYS —Sections 1 and 3 of the National Agreement dated August 21, 1954, which read:

"ARTICLE II — HOLIDAYS

"Section 1.

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe:

New Year's Day

Washington's Birthday

Decoration Day

Fourth of July

Labor Day

Thanksgiving Day

Christmas

* * * * *

"Section 3.

"An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employe's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday."

THE FACTS

Claimant is a regularly assigned hourly rated employe. He occupied a position the workdays of which were Friday through Tuesday, Wednesday and Thursdays being the rest days. Christmas Day, December 25, 1956, fell on a Tuesday — the last day of Claimant's workweek. He worked that holiday, for which he was paid time and one-half. He worked the day preceding the holiday. He did not work the first workday, December 28, following his rest days. The position was filled on December 28 by an extra man. Claimant was not paid holiday pay for December 25.

CONTENTIONS OF PARTIES

Petitioner contends that since Claimant worked the day preceding the holiday and compensation was paid to the extra man on Claimant's first workday following his rest days, Claimant qualified for holiday pay.

Carrier contends that inasmuch as Claimant failed to work on his regularly scheduled first workday following his rest days, he did not satisfy the conditions, which are prescribed in ARTICLE II, Section 3, to qualify for holiday pay.

RESOLUTION OF THE ISSUE

The August 21, 1954 Agreement flowed from the Report to the President by Emergency Board No. 106, dated May 15, 1954. At page 41 of the Report, in its discussion, the Board said:

"The Board feels that in relation to practice in other industries it would be appropriate for hourly rated non-operating railroad employes to receive straight time compensation for any of the seven holidays falling on any of the work days of their established work week, subject to certain limitations outlined. In reaching this conclusion the Board is strongly influenced by the desirability of making

it possible for the employes to maintain their normal take-home pay in weeks during which a holiday occurs. As will be indicated later, the Board proposes continuation of the present arrangements for time and a half for holidays worked. Such time and a half for holidays worked would be in addition to straight time pay for holidays. This will have the effect of take-home pay in excess of normal for those employes who work on holidays, but under the conditions involved is believed by the Board to be justified."

Then, on pages 54 and 55 of the Report the Board made the following recommendation:

"HOLIDAYS

"Issue 12.

Because of the reasons set forth in our discussion the Board recommends that the parties agree that:

"(a) Whenever one of the seven enumerated holidays falls on a work day of the work week of a regularly assigned hourly rated employe, he shall receive the pro rata rate of his position for that day.

* * * * *

"(c) In order to qualify to receive pay on a holiday which falls on a work day the employe must have worked the work day of his work week immediately preceding and following such holiday. If the holiday falls on the last work day of his work week, the first work day following his rest days shall be considered the work day immediately following. If the holiday falls on the first work day of his work week, the last work day of the preceding work week shall be considered the work day immediately preceding the holiday."

Petitioner points to the difference of language in the Emergency Board's recommendation (Issue 12 (c)) and ARTICLE II, Section 3, of the August 21, 1954 Agreement. It emphasizes the first sentence of Section 3 and urges it must be interpreted to mean that "if compensation paid by the Carrier is credited to the workdays immediately preceding and following" a holiday — then — the regularly assigned employe qualifies for holiday pay notwithstanding that he did not work on either or both of those days.

We are of the opinion that ARTICLE II, Sections 1 and 3 of the August 21, 1954 Agreement must be read as a whole and in the light of the discussion and recommendation of the Emergency Board which reveals the objective sought to be attained and its qualifications.

It is especially revealing that the Emergency Board's recommendation is equated "to practice in other industries." It is common knowledge that "in other industries," in order to discourage absenteeism, an employe must work his assigned workdays immediately preceding and following a holiday to qualify for holiday pay.

If we were to interpret ARTICLE II, Section 3, as urged by Petitioner the second and third sentences of the Section would be surplusage. We cannot ascribe such a meaningless action to the parties.

We hold that to qualify for holiday pay, as provided for in ARTICLE II, Section 3, of the August 21, 1954 Agreement, an employe must have compensation credited to him for the workdays immediately preceding and following the holiday. Since Claimant did not have compensation credited to his workday immediately following the holiday, 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 24th day of July 1963.