

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware & Hudson Railroad, that:

1. Carrier violated the agreement when it failed and refused to properly compensate L. W. Bennett for holiday pay on December 25, 1957 (Christmas Day).

2. Carrier shall now compensate L. W. Bennett in addition to compensation already received for services on such day, the sum of \$17.79.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between The Delaware & Hudson Railroad Corporation, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective April 1, 1957. The agreement is on file with this Division and is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board has jurisdiction of the parties and the subject matter under the provisions of the Railway Labor Act, as amended.

1. At all times involved herein, L. W. Bennett was an extra employee holding seniority under the Telegraphers' Agreement and performing work covered thereby.

2. At all times involved herein, B. H. Davis was the regular assigned third shift telegrapher-clerk at Uniondale, Pennsylvania. The assigned hours were 11:00 P. M. to 7:00 A. M. The assigned work days of each week were Tuesday through Saturdays with assigned rest days of Sunday and Monday of each week.

A copy of this award of Special Board of Adjustment No. 136 is attached for the convenience of the Board, marked Exhibit A.

In conclusion, the carrier would like to summarize the following facts which are pertinent to the instant dispute:

1. The National Agreement of August 21, 1954, provided "holiday pay" for regularly assigned hourly and daily rated employees only. It did not provide such pay for extra men. The rule, as awarded, did not attach this holiday pay allowance to a position or an assignment, but rather to regularly assigned employees.
2. In order for an extra employee to qualify for such holiday pay, some special rules of the contract must provide for a transition of holiday pay from the regularly assigned employee to an extra employee who happens to be temporarily filling the assignment on a holiday. Such a transition obviously can only be made by specific rules so providing in a manner which is clearly not subject to any other interpretation.
3. Article No. 17-C of the current agreement provides that when an extra employee takes the assignment of a regular employee, he assumes the conditions of such assignment. This article cannot be interpreted in the same manner as special rules were interpreted in awards 7977, 7981 and 8390.

The employees are here attempting to secure, through an award of the Board, a new agreement provision over and above that which was agreed to by the parties. Inasmuch as employees' position cannot be sustained by any rule of the agreement, the carrier respectfully submits that the instant claim involves request for a change in the agreement, which is beyond the province of the Board. It is a well established principle that it is not a function of the Board to modify or change an existing rule or supply a new rule where none now exists. To sustain employees' position in this case would be tantamount to writing a new provision into the agreement which does not appear therein and was never intended by the parties.

A denial award is urgently requested.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant was employed by the Carrier as an extra telegrapher-clerk and assigned to relieve the regular incumbent on December 24, 25, and 26, 1957. Christmas Day, December 25th, was a paid holiday for which the Claimant herein seeks pay, at the regular rate, under the provisions of Article 17 (c) of the Agreement, in addition to time and one-half for service performed on the holiday.

Article 17 (c) of the Agreement provides:

"When an extra employee takes the assignment of a regular employee, he assumes the conditions of such assignment, such as the work week, the rest days, compensation, etc."

Thus it was contended that an extra employee relieving a regularly assigned employee on a regular assignment must be paid the same compensation as would have been paid to the regularly assigned employee. The regularly assigned employee if he had worked the same assignment would have received holiday pay.

It was the contention of the Carrier that only regularly assigned employees were entitled to holiday pay, not extra assigned employees, and cite Article No. 30 — Holiday Pay.

"A. Effective May 1, 1954, each regularly assigned hourly and daily rated employee 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 work day of the work week of the individual employee:

* * * * *

Christmas

* * * * *

The Carrier's position was that as the Claimant was not regularly assigned he was not entitled to holiday pay. Furthermore, Article 17 (c) applies to assignment not to the person as required in Awards 7977, 7981 and 8390 sustaining similar claims.

Thus the Carrier contended that for the extra employee to receive holiday pay he must assume the conditions of the person he relieved not the assignment as required in Article No. 17 (c). That holiday pay is personal to the regular assigned employee as provided for in Article 30 (A).

This Board is of the opinion that Article 17 (c) requires the extra relief employee to assume the conditions of the assignment rather than the person of the regular assigned employee, as required by Awards 7977, 7981 and 8390, when similar claims were sustained.

Thus the contentions of the Carrier that the Claimant was not a regular assigned employee as required by Article 30 (A), in order to qualify for the holiday pay, have merit.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1964.