Award No. 13217
Docket No. CL-12994

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5082) that:

1. Carrier violated the Clerks' Agreement when the employes of the Traffic Department, Auditor of Revenues, Auditor of Disbursements, Car Record, Accounts Bureau, Superintendent of Transportation and the Chief Engineer's offices were required to work beyond 1:00 P. M. on Friday, December 23, 1960 and Friday, December 30, 1960, the last work days before Christmas Day and New Year's Day, respectively, without conference or agreement with the Clerks' Committee.

2. Carrier shall be required to restore the established practices of releasing the employes of the departments or offices enumerated in part (1), at 1:00 P. M. on the last work day before Christmas Day and New Year's Day.

3. Carrier be required to allow each employe in the departments or offices enumerated in part (1) at time and one-half rate of their positions for time worked after 1:00 P. M. on December 23, 1960 and December 30, 1960.

Reparation due employes shall be determined by joint check of Carrier's payrolls and/or other records.

EMPLOYES' STATEMENT OF FACTS: For many years, prior to dates of this claim, employes in the departments or offices listed in the Statement of Claim were permitted early release at 1:00 P. M. on the last working day before Christmas and New Year. This practice of release has been effectively standardized in the years since 1947 at the hour of 1:00 P. M. regardless of the day of the week on which the holiday occurred.

That a practice of many years standing has been established cannot be disputed. Your Honorable Board has frequently held that where such a practice exists, and has not been changed through negotiations under the Railway Labor Act, it is as enforceable as the written contract itself, and may not be abrogated without the consent of the other party.

In view of the above it is the Committee's contention that the Carrier

In conclusion, Carrier reiterates that a uniform and long-continued practice as alleged in this dispute has not existed. Recognition must be given to the fact no rule was included in the last agreement negotiated and that only once since the effective date of that agreement was the early release from work granted to the employes when the existence of the holidays was the same as in this dispute. Therefore there is no justification or support under the rules of the schedule agreement or otherwise in this dispute and it should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: As set out in Paragraph 1 of the Statement of Claim, a violation of the Clerks' Agreement is alleged when certain employes covered thereby were required to work after 1:00 P. M. on Friday, December 23, 1960, and Friday, December 30, 1960. These dates were the last workdays of the employes involved before holidays occurring on Christmas Day and New Year's Day. The record discloses that they were released at 3:00 P. M. on those dates and paid for 8 hours work.

The fact that it was customary to release clerical employes at an early hour on the last working days before Christmas Day and New Year's Day is not disputed. The main thrust of the Employes' argument here is that beginning in 1951 and thereafter a practice of releasing the forces at 1:00 P. M. on those days was established and that such practice was of such consistency and duration as to have the effect of an agreement rule which could not be abrogated or modified unilaterally by the Carrier.

On the evidence of record this contention is untenable.

In the first instance, the evidence shows the practice to have been initiated voluntarily and unilaterally by the Carrier in 1941 as a gratuitous act; not one which was the subject of negotiation and agreement with the Employes. (Cf. Award 10122, cited by the Employes as in point). Moreover, when the Employes on one occasion sought to change this voluntary policy into a bilateral and binding agreement, the request was denied. Accordingly, the practice having been continued as a unilateral and discretionary management policy, it may properly be modified or even annulled by the Carrier at any time without incurring liability for rules violation. (See Awards 6168, 7770, 9316, and 9606).

Here no rules of the Agreement were violated and no agreed-upon practice of releasing employes at any time certain on the workdays involved has been shown.

Accordingly, the Board finds the claim is without merit and must, therefore, be denied.

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 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 19th day of January 1965.