Award No. 14106
Docket No. TE-13207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad Company that:

> M. O. Lawson, Agent-Operator-Leverman, Switz City, Indiana, is entitled to be paid for work performed at Switz City Block and Interlock Station on May 30, 1960, for eight (8) hours at the time and one-half rate. Regulation — 5-G-1, 5-F-1, 4-D-1, 4-G-1 and 4-H-1 (a) govern.

EMPLOYES' STATEMENT OF FACTS: Claimant Max O. Lawson, was the regularly assigned Agent-Operator-Leverman at Switz City, Indiana, a position covered by the agreement between the parties, with assigned hours 8:00 A. M. to 4:00 P. M., Monday through Friday each week, including holidays. The assigned rest days are Saturday and Sunday. May 30, 1960, a holiday, fell on Monday, which the claimant was scheduled to work. Carrier, however, gave him notice that he was not to work this holiday. Lawson made his plans accordingly.

At 7:10 A. M., Monday, May 30th, Carrier notified Lawson to stand by and be prepared to work, beginning at 12:00 Noon. He reported and was held on duty for two hours. He rendered a time claim for eight hours at time and one-half, the holiday rate of pay. His claim was rejected at the lower level after having been properly handled and upon appeal being made to the Manager, Labor Relations, the District Chairman (Mr. Lawson also) and the Superintendent–Personnel prepared the following Joint Statement for said appeal:

"PENNSYLVANIA RAILROAD

Southwestern Region

Southwestern Region
ORT Case No. 26-60

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

It has been shown that the Rules Agreement does not entitle the Claimant to the compensation claimed and that, to the contrary, he was properly compensated under the applicable provisions of Regulation 4-H-1 (b).

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned to work 8:00 A. M. to 4:00 P. M., Mondays through Fridays, at Switz City Interlock Station. Claimant was given the 16 hour notice in accord with Regulation 5-F-1 excusing him from duty Monday, May 30, 1960, a holiday enumerated in Regulation 4-H-1. At 7:10 A. M. on May 30th Carrier called him at his home and notified him to come to work at 12 noon that day. He reported at Noon and worked for two hours at which time he was directed to go home. In addition to his days' straight time pay, to which he was entitled even if he had not been required to perform any work on that holiday, Carrier paid him for the two hours he worked at the time and one-half rate.

Organization bases its contention that he should have been paid eight hours at the time and one-half rate instead of the two hours, among other arguments, on the argument on which we believe this case turns, i.e.: that the call to Claimant on the morning of May 30th had the effect of rescinding the 16 hour notice previously given him. Carrier denies that the Monday morning call had this effect.

Clearly, if the 16 hour notice were rescinded, Claimant would revert to the position that he would have been in if no such notice had ever been served: he would not have been excused from duty on the Monday in question as Monday was one of his regularly assigned days to work and if he worked on that Monday he would be entitled to pay at the rate for the day for eight hours even though he had been directed to work only two. The case is presented as a case of first impression.

Carrier argues that once the 16 hour notice was given, Claimant was in the same position as an employe for whom Monday was not a regularly assigned day, and that the Monday morning call to Claimant had no different effect than if he were an employe for whom Monday was not a regularly assigned work day.

Regulation 5-F-1 reads:

> "When employes, who are bulletined to work on holidays enumerated in Regulation 4-H-1, are to be excused from duty on those days, they shall be so notified not less than sixteen (16) hours in advance of their normal starting times on such days."

A normal reading of Regulation 5-F-1 does not lead to the conclusion that it intends to permit Carrier to alter the regular bulletined work days of an employe on one of whose bulletined work days a holiday falls, but that its apparent purpose is to require Carrier to give a minimum advance notice to such employes who are to be excused from duty on those days. If after an employe receives such required advance notice that he will be excused from duty (with no loss in pay) on one of his bulletined work days, he is then notified to come to work on that day, such second notice, regardless of how many hours he is required to work, changes his status from an employe excused from duty on the day in question to that of an employe not excused from duty; it would require strong evidence to prove that the parties' intention although not readily apparent from the language of Regulation 5-F-1 was that the Regulation was intended to permit the change in the bulletined regular work days of an employe; no such evidence is in this record.

We are of the opinion that Claimant was not properly compensated for Monday, May 30, 1960; Carrier should have paid Claimant for the full eight hour day at the time and one-half rate.

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 to the extent that Carrier shall pay Claimant the difference between what it did pay Claimant for Monday, May 30, 1960, and what it would have paid had Claimant worked the full eight hours on that day.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14106,
DOCKET TE-13207 (Referee House)

The Majority's decision is not supported by rule or logic. In fact, Regulation 4-H-1 which was purportedly violated, according to the Majority, was not even mentioned in the Opinion, whereas Regulation 5-F-1 which, the Majority admitted was **not violated,** was quoted in full.

Regulation 4-H-1, reads:

> "(a) If conditions of business permit, employes shall be excused on New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas. When any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation, shall be considered the holiday for the purpose of this regulation (4-H-1).
>
> (b) Time worked by employes on the following holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, with a minimum of two (2) hours at the time and one-half rate."

The Petitioner argued Regulation 4-H-1 was not applicable to employes, like the Claimant, whose positions were bulletined to work on the holidays. For example, Petitioner argued:

> "The Committee also feels Regulation 5-F-1 applies to positions which are bulletined to work and that Regulation 4-H-1 applies only to positions which are not bulletined to work and when employes are called to work on position not bulletined to work on the holidays enumerated in Regulation 4-H-1, they are compensated in accordance with Regulation 4-H-1 (b)."

It is apparent that a ruling from this Board accepting Petitioner's contention, would have meant that Claimant and all similarly situated employes, would not be entitled to receive the overtime rate on holidays since Regulation 4-H-1 is the **only** rule which provides such compensation.

The Petitioner's reasons for contending Regulation 4-H-1 did not apply, were apparent. While this rule granted overtime pay for work performed on a holiday, it also clearly specified that:

> "Time worked . . . shall be paid at the rate of time and one-half, **with a minimum of two (2) hours at the time and one-half rate.**" (Emphasis ours.)

It is clear, the minimum payment is applicable to employes used on a holiday, regardless of the type of position worked. The rule makes **no distinction** between positions which are scheduled to work on holidays and those positions which are not. The Majority certainly had no right to amend the rule by interpretation and hold that a minimum payment of eight hours — at the time and one-half rate is necessary to fully comply with the rule.

In an effort to bolster a decision which could not be discussed with any logic, the Majority compares our facts with a hypothetical case where advance notice is not given to an employe scheduled to work on a holiday that his services were not needed until after he reports. In that case, the Majority says such an employe would be entitled to "eight hours even though he had been directed to work only two."

The cases are clearly distinguishable. In the latter case, there would be no compliance with Regulation 5-F-1. On that basis, claims had been sustained on the property and oddly enough, one of them — System Docket 311 — was cited by the Majority as supporting their position here. In the same breath, however, they acknowledged that Regulation 5-F-1 was complied with in our case and our facts show that it was.

Thus, the Majority is in the awkward and rather absurd position of:

(1) applying a portion of Regulation 4-H-1 and ignoring the remainder;

(2) finding a violation of a rule (4-H-1) that was not argued by Petitioner — but on the contrary, a rule which the Organization said did not apply to Claimant;

(3) relying upon precedent (System Docket 311) which in turn, was based solely on a violation of Regulation 5-F-1, although Majority concedes that Regulation 5-F-1 was not violated in our case.

For the reasons set forth above, and others, we dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts