

Award No. 15329
Docket No. TE-12095

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

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

1. Carrier violated provisions of Article II, August 21, 1954 Agreement when it failed and refused to pay Howard Quinn, in accordance therewith, for the following holidays to-wit:

Decoration Day (May 30, 1959)

Fourth of July (July 4, 1959)

2. Carrier shall be required to pay Howard Quinn, in addition to allowances heretofore made account such holidays, the sum of \$0.96 for May 30, 1959, and the sum of \$0.96 for July 4, 1959.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect, collective bargaining agreements entered into by and between The Cincinnati Union Terminal Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Rules Agreement was effective January 1, 1955, and has been amended. The Agreement, as amended, 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 to the highest officer designated by the Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

The issue to be resolved is whether the Carrier used the correct hourly rate in computing holiday pay for the claimant on the two dates involved in the claim. The Carrier compensated claimant for the holiday pay on the basis of \$2.416 per hour. Employees contend claimant should have been compensated on the basis of \$2.536 per hour.

11. In addition thereto, claimant, on each of said holidays, qualified for eight hours' pay at the pro rata hourly rate under the provisions of Appendix B, (page 34) Article II, Rule Provisions. He was paid compensation for the holidays as follows:

May 30, 1959 — 8 hours at rate of \$2.416 per hour.

July 4, 1959 — 8 hours at rate of \$2.416 per hour.

12. Mr. J. E. Walsh, General Chairman, filed claim with E. J. Volle, Trainmaster, as set forth in ORT Exhibit No. 1. Mr. Volle declined the claim as set forth in ORT Exhibit No. 2.

13. Mr. Walsh then appealed to Mr. J. R. Miller, Personnel Director and Assistant to Manager, as set forth in ORT Exhibit No. 3. Mr. S. W. Rogers, Manager, declined the claim, as set forth in ORT Exhibit No. 4. Mr. Rogers again declined the claim on October 23, 1959 (ORT Exhibit No. 5). Mr. Walsh requested reconsideration in letter of October 30, 1959 (ORT Exhibit No. 6). On November 3, 1959, Mr. Rogers again declined the claim, as set forth in ORT Exhibit No. 7.

ORT Exhibits 1 to 7, inclusive, attached hereto, are made a part hereof as though set out herein word for word. These Exhibits show handling of the dispute on the property and statements, contentions and conclusions of Carrier officers are included for the purpose of showing such handling.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On the dates in question Mr. Howard Quinn held a regular assignment as Leverman in Cabin "C," rate \$2.416 per hour but due to applicable rules of the agreement was used temporarily filling vacancies in Tower "A" as Leverman, rate \$2.536 per hour, on May 30 and July 4, 1959. He was allowed 8 hours' pay at time and one half rate at \$2.536 per hour and 8 hours pro rata rate at \$2.416 as holiday pay for both dates.

OPINION OF BOARD: Claimant was a regularly assigned employe and as of the holidays involved he had been, in accordance with agreement rules, filling vacancy on a higher rated position. By way of paid holiday payments under Article II, Section 1 of August 21, 1954 National Agreement for the holidays involved Carrier paid Claimant at the rate of his regular position. The claim here is for the difference in rates, it being claimed that Claimant was to be paid at the rate of the position he was filling as of those holidays.

Having been assigned, in accordance with agreement rules, to fill vacancy on higher rated position Section 1 of Article II fixes the rate of the paid holiday payment, viz, the "rate of the position to which assigned." The Claim is meritorious and will be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.