Award No. 15361
Docket No. CL-15504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5714) that:

(A) Carrier violated the Clerks' Agreement at Memphis, Tennessee, when it failed to properly compensate J. E. Parker for work performed on July 4, 1964, a regularly assigned rest day which was also a holiday.

(B) Carrier shall now compensate J. E. Parker for eight hours' pay at the time and one-half rate of position No. 199, in addition to that paid for service performed on July 4, 1964. (Pro rata rate of position No. 199 is $20.57 per day.)

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties are on file with the Board and by this reference are made a part hereof.

Position No. 199 is assigned to work seven days each week at Woodstock, Tennessee, a station located eleven miles north of the Freight Agency Office, Memphis, Tennessee. The station facilities at Woodstock are within the jurisdiction of the Agent at Memphis who also has direct supervision of the clerical employes working at Woodstock.

Claimant J. E. Parker is regularly assigned Monday through Friday to position No. 199. Rest Day Relief Clerk R. Hamlin, the occupant of Relief Position No. 5 is regularly assigned to relieve position No. 199 on Saturday and Sunday of each week.

Saturday, July 4, 1964, Relief Clerk Hamlin was granted permission to be absent for the day. Claimant Parker was called and used to fill the vacancy for which he was compensated eight hours' pay at the time and one-half rate.

Employes contended that Claimant Parker was improperly compensated inasmuch as the Agreement rules provide he was entitled to eight hours' pay at the time and one-half rate for working on a holiday and eight hours' pay at the time and one-half rate for working on one of his assigned rest days.

Five Third Division Awards have given the union encouragement to file claim for more than it has recognized for years is due. The awards are not based on sound reasoning and will undoubtedly one day be overturned. However, this dispute concerns only the Illinois Central contract. The parties have for forty years agreed that the contract does not call for more than one overtime day for working on a holiday that falls on an employe's rest day. A referee's interpretation of another contract cannot alter that to which the clerks and the Illinois Central have agreed.

The company will show that the rules do not call for payment of two overtime days. However, there is a more important issue at stake in this case. The parties have for years been in agreement about the proper payment for working a holiday that falls on a rest day. The more important issue, then is:

> Do awards interpreting other contracts nullify that to which the parties themselves have agreed?

Management will show that the rules call for the payment of one overtime day instead of the two overtime days claimed. It will show the five awards cited by the union are erroneous. Second, it will show that previous awards of the Adjustment Board have held that when more than one rule applies, one payment satisfies all the rules. Finally, it will prove that the union has agreed that one overtime day satisfies the requirements of both the rest day rule and the overtime rule. It will introduce a host of exhibits showing that the company and the union have been in agreement for years that one overtime day is the proper pay.

CARRIER'S STATEMENT OF FACTS: At the time of the claim, Claimant J. E. Parker was the regular incumbent of position 199. His regular work week was Monday through Friday, with rest days of Saturday and Sunday. On Saturday, July 4, 1964, the regular relief employe was not available. Claimant Parker was called to work position 199 and was paid a day at the overtime rate as prescribed by Rule 42(b). The rule provides in part:

> (b) Holiday work — work performed on the following legal holidays, viz; . . . Fourth of July . . . shall be paid for at the rate of time and one-half.

The union filed claim for a second overtime day and argued that one time and one-half day did not satisfy the requirements of Rule 42(b). The correspondence concerning the claim is attached as Management's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Argument presented here in behalf of the Carrier asserts that for some years "the Company and the Union have been in agreement that the payment of one overtime day satisfies both the holiday provision and the rest day provisions." Carrier relies on its Rule 37, which is its "overtime" rule. Overtime is not here involved. We are here concerned with payment to an employe who is required to work on his rest day, which coincidentally was a recognized holiday.

Claimant Parker was called on his rest day to fill a vacancy on a relief job, the incumbent of which was on authorized leave, for which he was paid eight hours at the time and one-half rate.

By coincidence, that day happened to be July 4, 1964, a recognized holiday. Claimant is now seeking payment for work on a recognized holiday at time and one-half rate.

Carrier argues that the rules "do not call for payment of two overtime days"; that the parties have for years been in agreement about the proper payment for working a holiday that falls on a rest day. We are not here concerned with any "overtime."

We are concerned with (1) an employe who is called to work on his rest day, and (2) that day, purely by coincidence, is a recognized holiday under the agreement.

Rule 42 provides "that a clerk who works on a holiday will be paid at the rate of time and one-half."

Rule 37 provides "that a clerk who works on his rest day will be paid under Rule 40" (one and one-half times the hourly rate.)

The agreement (Rule 37) describes overtime as

> "time in excess of eight (8) hours, exclusive of the meal period, on any day."

We are thus dealing with two separate and distinct rules: one which grants an employe extra compensation if required to work on his rest day; the other grants him extra compensation if required to work on a recognized holiday.

This docket and Docket CL-15861 bring to sixteen the number of times the issue here involved has been before this Division. The most recent is Docket TE-12889, Award No. 15144, which was adopted on the day these dockets were argued. The first was Award 10541, adopted April 25, 1962. All have been sustaining Awards.

We concur in the consistent prior opinions of this Board. We will follow the authority of the decided cases here cited by the Organization. See Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 14978, 15000, 15052, 15144.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15361, DOCKET CL-15504 (Referee Lynch)

We respectfully submit that this Award is invalid for at least three independent reasons:

1. The ruling that "overtime" is not involved is wholly baseless and completely without reason; hence, it exceeds the jurisdiction of the Board.

2. The ruling that Rule 42 (b) requires Carrier to pay Claimant at the triple time rate of pay for work performed on a holiday is baseless and completely without reason.

3. The record reveals a binding agreement between the parties that one payment at the time and one-half rate satisfies both the Rest Day Rule and the Holiday Rule; therefore, the finding that this case is controlled by Awards involving other Carriers and agreements is baseless and without reason.

I.

THE RULING THAT "OVERTIME" IS NOT INVOLVED IS WHOLLY BASELESS AND COMPLETELY WITHOUT REASON; HENCE, IT EXCEEDS THE JURISDICTION OF THE BOARD.

The controlling agreement expressly provides that there shall be no overtime on overtime, and the Employes do not argue that this claim has any merit if the 8 hours worked by Claimant on this holiday-rest day was overtime. To the contrary, they have expressly predicated their claims on the contention that "there is no overtime involved in the instant claim."

This Award is based squarely on the conclusion that "We are not here concerned with overtime payment." That conclusion, in turn, is predicated squarely on the finding that "The agreement (Rule 37) describes overtime as 'time in excess of eight (8) hours, exclusive of the meal period, on any day.'"

This conclusion that overtime is not involved simply because Rule 37 describes overtime as time in excess of 8 hours, exclusive of meal period, etc., is baseless and without reason because this same rule also describes as overtime the time involved in this claim, namely, the first 8 hours of time on a holiday.

The pertinent portions of Rule 37 read:

"(d) There shall be no overtime on overtime; neither shall **overtime hours** paid for, **other than hours not in excess of eight paid for at overtime rates on holidays** or for changing shifts, be utilized in computing the forty hours per week, . . ." (Emphasis ours.)

This language in Rule 37 could hardly be more clear in stating that hours worked on holidays, including the first 8 hours, are "overtime hours," and further that the time and one-half rate of pay allowed for such work is the "overtime rate" of pay.

The conclusion that we are not concerned with overtime in this claim is baseless and without reason for the additional reason that the record contains undisputed evidence that over the years these parties have agreed that 8 hours worked on a holiday is "overtime." (See, among others, the General Chairman's letter at Page 87, Docket CL-15861.) The Employes significantly do not deny their past agreement on this point, but rather base their case solely upon Awards of this Board affecting other Carriers and agreements.

II.

THE RULING THAT RULE 42 (b) REQUIRES CARRIER TO PAY CLAIMANT AT THE TRIPLE TIME RATE OF PAY FOR WORK PERFORMED ON A HOLIDAY IS BASELESS AND COMPLETELY WITHOUT REASON.

The Employes stipulate in companion Docket CL-15361 that the Carrier fully satisfied its obligations under the Rest Day Rule by allowing Claimant 8 hours' compensation at the time and one-half rate for work performed on the involved holidays, and they demand payment of 8 additional hours at the time and one-half rate (making a total allowance of triple time) solely on the basis of Rule 42 (b), which reads:

"(b) Holiday Work — **Work performed on the following legal holidays,** viz.: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, 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 for at the rate of time and one-half.**" (Emphasis ours.)

This rule unqualifiedly provides that all work performed on the designated holidays shall be paid for at the time and one-half rate. No exception is made in favor of work on holidays which also happen to be rest days.

This Holiday Pay Rule does not even speak in terms of a minimum guarantee of 8 hours for being called to work on a holiday. It speaks strictly in terms of rate of pay for work performed on the designated holidays, and it establishes the time and one-half rate for all such work.

Certainly it is arbitrary and in excess of this Board's powers for the Board to rule that this language supports a demand for triple time for work performed on any holiday. See **Award 3, SBA 603** (Robertson), **Award 23, SBA 564** (Dolnick), and **Award 14240** (Perelson), involving holiday work; also

see Awards 13373 (Hall), 12654 (McGovern), 10861 (Kramer), 8033 (Guthrie), 8013 (Cluster), 8004 (Bailer), 5473 (Carter), 5423 (Parker), 3444 (Douglas), among many others denying a double penalty where one act falls under the prohibition of two or more rules.

III.

THE RECORD REVEALS A BINDING AGREEMENT BETWEEN THE PARTIES THAT ONE PAYMENT AT THE TIME AND ONE-HALF RATE SATISFIES BOTH THE REST DAY RULE AND THE HOLIDAY RULE; THEREFORE, THE FINDING THAT THIS CASE IS CONTROLLED BY AWARDS INVOLVING OTHER CARRIERS AND AGREEMENTS IS BASELESS AND WITHOUT REASON.

The refusal of the Referee and the Labor Members to recognize and apply the agreement which the parties themselves have made concerning the proper payment for working a holiday that falls on a rest day is arbitrary and in excess of the Board's jurisdiction.

Carrier has placed in the record numerous letters of the Employes' General Chairman which establish that over the years the parties have consistently agreed that the controlling Rest Day and Holiday Rules merely require the payments which Carrier has already made to this Claimant for his holiday-rest day work. These letters of the General Chairmen go back over the period from September of 1953 to October of 1963, during which time there was no change whatever in the controlling rules (the last of these letters is dated 18 months after **Award 10541** was rendered). Other evidence submitted by Carrier and completely unrefuted by the Employes goes back over a period of 40 years, during which there have been Rest or Relief Day Rules and Holiday Rules in the parties' agreement.

Carrier's evidence establishes beyond any shadow of doubt that "the Company and the Union have been in agreement that the payment of one overtime day satisfies both the holiday provision and the rest day provisions." The Employes significantly made no attempt whatever on the property and in their initial submissions to the Board to disprove Carrier's evidence or its assertions regarding the alleged agreement. The existence of the agreement is unquestionably established. Such agreement is binding upon both the parties and this Board.

It was not until more than two years after the release of **Award 10541** involving another Carrier and a different agreement that the Employes commenced claiming additional pay on the express contention that the doctrine of **stare decisis** now requires this Carrier to make the payments which were allowed the claimants in **Award 10541.** To sustain this claim merely because the claims were sustained in**Award 10541** and subsequent Awards purporting to follow it, is to pervert rather than to correctly apply the doctrine of **stare decisis.** This matter was fully discussed and the irrelevance of **Award 10541,** et al., to this case fully established in the memorandum submitted to the Referee by the Carrier Members when this case was considered in panel. By reference, we incorporate the contents of that memorandum in this dissent.

Carrier's primary defense to this claim and the companion claim in Docket CL-15861 was the clear agreement which the parties have had over the years

concerning the proper application of the involved rules; and Carrier stated the controlling issue to be:

> "Do Awards interpreting other contracts nullify that to which the parties themselves have agreed?"

This Board can lawfully give but one answer to that question, and that is a resounding "No." Under the Law these parties are bound by their own clear agreement and not by the interpretation which other Carriers or this Board have placed on different agreements.

Although the Award does not expressly refer to Carrier's question, by sustaining the claim on this record which so clearly establishes the existence of the alleged agreement, the Award necessarily resolves the question in the affirmative. Such a resolution of that question is contrary to law and the Award is invalid. See the authorities cited above.

We dissent.

G. L. Naylor
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T. F. Strunck
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