Award No. 15518
Docket No. CL-15386

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(The Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the provisions of Agreement effective February 8, 1956, when, on the payday next following the holiday, Saturday, February 22, 1964 (Washington's Birthday), it failed and refused to allow L. R. Kershner, J. M. Akers, F. W. Sammons, D. E. Tuell, P. D. Worthington, G. E. Salmon, John Riffe, W. E. Conley, W. E. Smith, J. L. Rowe and E. D. Sammons holiday pay under Rule 39½ when it was known that they did work at least four straight time days in the work week beginning Monday, February 17, and ending Sunday, February 23, 1964, and

(b) The employes named in Section (a) of this claim be allowed holiday pay as provided in Agreement effective February 8, 1956.

EMPLOYES' STATEMENT OF FACTS:

1. Effective February 8, 1956 the parties adopted the following Memorandum Agreement:

"A G R E E M E N T

Effective February 8, 1956

It is agreed that:

(1) Employes on the Russell, Kentucky and Parsons, Ohio extra lists will be allowed holiday pay under Rule 39½ when they work at least 4 straight time days in the work week in which the holiday occurs, but such employes will not be required to have received compensation on the day preceding and the day following the holiday.

G. E. Salmon	—	4 days
John Riffe	—	4 days
W. E. Smith	—	4 days
J. L. Rowe	—	4 days
E. D. Sammons	—	4 days

The Carrier does not question the fact that these employes would have been entitled to holiday pay on Saturday, February 22, 1964, under the February 8, 1956 agreement, if it had been applicable. However, on many of the holidays since July 1, 1960, employes on this extra list would not have been entitled to holiday pay under this February 8, 1956 agreement that were actually paid holiday pay as provided in Article III of the August 19, 1960 agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue for our determination is whether or not a Memorandum Agreement between the parties, dated February 8, 1956 was in force and effect on the date this claim arose.

Carrier argues that Article III of the August 19, 1960 National Agreement between the parties abrogated the preceding Agreement of February 8, 1956. The National Agreement reads, in part, as follows:

> "The provisions of this Section and Section 3 hereof applicable to other than regularly assigned employes are **not intended to abrogate or supersede more favorable rules** and practices **existing on certain carriers** under which other than regularly assigned employes are being granted paid holidays." (Emphasis ours.)

Under the 1956 Agreement, other than regularly assigned employes can qualify for holiday pay if the holiday falls on Saturday. Under the 1960 National Agreement, holiday pay can only be obtained by such employes if the holiday falls on a day within the work week, i.e., Monday through Friday. The latter agreement is, however, more beneficial to the employes in overall application.

The Organization argues that the former Agreement is superseded by the latter Agreement only insofar as its provisions are less favorable to the employes, and that the agreements must be read together in each instance to determine the extent of the supersedure, to the effect that the more favorable provisions of either or both agreements shall apply.

The parties obviously considered and anticipated the nature of this claim at the time the 1960 Agreement was consummated. Otherwise, the saving clause, hereinbefore recited, would not have been included therein. We do not find the clause ambiguous, but, instead, clearly expressive of the parties' intent at the time of contracting, i.e., when the 1956 Agreement could be applied to a given situation for the benefit of the employes, it would be so applied. The claim 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 21st day of April 1967.

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