

Award No. 15553

Docket No. CL-15903

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5860) that:

1. The Carrier violated the current Agreement between the parties, effective August 1, 1958, as amended, when it failed and/or refused to properly compensate Robert L. Roberts for work performed on December 25, 1964, a regularly assigned rest day which was also a recognized holiday.

2. Claimant shall now be compensated for an additional eight hours at time and one-half rate for service performed on December 25, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Claimant in this case is Mr. Robert L. Roberts, who holds a regular position of Second Teletype Utility Clerk, 4:00 P.M. to 12:00 Midnight, Sunday through Thursday, with Friday and Saturday as his rest days. The regular incumbent of the Caboose-Supplyman's position was on vacation, and in the absence of an extra employe, and no vacation relief employe available to work the position, it was filled on a day to day basis, applying the principle of seniority at punitive rate. On Friday, December 25, 1964, Claimant worked this position. For this rest day service the Carrier paid him under the provisions of Rule 25(4), but he was not paid for work performed on the legal holiday, Christmas, December 25, 1964, at the rate of time and one-half as provided in Rule 34-1-b.

Claim was filed with the Terminal Trainmaster (Employees' Exhibit No. 1) on behalf of Claimant by Local Chairman Gage. Claim was declined by Terminal Trainmaster. (Employees' Exhibit No. 2.)

Appeal was filed by the General Chairman with Mr. J. Cary, Superintendent (Employees' Exhibit No. 3). Superintendent Cary declined claim (Employees' Exhibit No. 4), stating Claimant was working the Caboose-Supply-

December 25, 1964, in addition to an identical payment already allowed for this work, has been declined by the highest appeal officer on the property and is properly before your Board.

In his work week beginning on Sunday, December 20, 1964, claimant had worked five days (40 hours at straight-time rate) prior to accepting the rest day work here involved. In the twenty-four hour period beginning at 4:00 P.M., Thursday, December 24, 1964, claimant had already worked eight hours at the straight-time rate of his position prior to working the second eight hours in this twenty-four hour period when filling the vacancy here involved.

It follows that when claimant worked from 7:00 A.M. to 3:00 P.M. on December 25, 1964, he was at the same time working:

1. Eight hours' time in excess of eight hours in a 24-hour period as contemplated in Rule 25 (3) (a).
2. Eight hours in excess of forty straight-time hours in a work week as contemplated in Rule 25 (3) (b).
3. Eight hours on more than five days in a work week as contemplated in Rule 25 (3) (c).
4. Eight hours on a rest day as contemplated in Rule 25 (4).
5. Eight hours on a holiday as contemplated in Rule 34-1 (b).

The claim presented on final appeal on the property and accordingly the only claim properly before your Board presumes that claimant has already been paid eight hours at time and one-half rate for work on a rest day under Rule 25 (4) and that an additional eight hours at the same time and one-half rate should now be allowed under Rule 34-1 (b). There is in this particular case no claim of record for a third, fourth and fifth days' pay at time and one-half rate under the three other regulations under which claimant worked in this case, or for one or more days under any one or more of these other regulations.

OPINION OF BOARD: Claimant Robert L. Roberts occupied the regular position of Second Teletype Utility Clerk, hours 4:00 P.M. to 12:00 P.M., Sunday through Thursday, with Friday and Saturday as rest days. After completing his regular assignment on Thursday, December 24, 1964, Mr. Roberts filled a position of a vacationing Caboose-Supplyman on Friday, December 25, 1964, during the hours of 7:00 A.M. to 3:00 P.M. For this tour of duty he was paid eight hours at time and one-half rate. Claimant contends that he was paid for his rest day service under the provisions of Rule 25 (4), but that he was not paid for work performed on the legal holiday, December 25, 1964, as provided for in Rule 34 (1) (b).

Carrier takes the position that Claimant is only entitled to a single payment of a day's pay at time and one-half rate for work performed on a rest day that was also a holiday. It also argues that Mr. Roberts did not perform service on a rest day, since he worked on Friday, December 25, from 7:00 A.M. to 3:00 P.M., whereas his hours on his regular position are 4:00 P.M. to 12:00 Midnight. Since he did not perform service on a rest

day, it asserts that he was not paid under Rule 25 (4) - Service on Rest Days, but was properly paid under Rules 34 (1) (b) - Sunday-Holiday Work, which also provides for time and one-half rate.

Although Carrier's denial includes the statement that Claimant did not work on a rest day and, therefore, Rule 25 (4) is inapplicable, the record indicates that the parties accepted this rule as the basis for compensation at the time and one-half rate he received. Recognizing that Claimant had received payment for a rest day, the parties concerned themselves with the issue of whether or not Mr. Roberts was entitled to an additional payment on the basis of Rule 34 (1) (b) - Sunday-Holiday Work. Carrier acknowledged this issue in these words: "The question is rather whether an employee who has worked eight hours on a holiday and has been paid eight hours at time and one-half rate under Rule 25 (4) by reason of that work being performed on a rest day must under Rule 34 (1) (b) be paid another eight hours at time and one-half." Carrier has stated succinctly the question to be resolved in this dispute.

This issue has been disposed of in numerous awards, including Awards 10541, 10679, 11454, 11899, and 12471. We concur in these decisions which hold that Carrier has an obligation to pay for service performed on a rest day which falls on a holiday under two separate rules. Accordingly, Claimant is allowed compensation for an additional eight hours at time and one-half rate for December 25, 1964.

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 Employees involved in this dispute are respectively Carrier and Employees 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 5th day of May 1967.

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