Award No. 15568
Docket No. TE-15161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 that Carrier violated the Agreement when it closed Kane Block Station on December 25, 1962 and January 1, 1963, while work remained to be performed at this location.

Regular Operator L. M. Schultz, second trick Kane, Pennsylvania position was blanked on the days listed above, and she was called out to perform work on the passenger trains at Kane, Pennsylvania on both of these days. The work performed is part of her daily duties at this location.

Claim is hereby made that Operator Schultz be allowed eight (8) hours punitive rate for December 25, 1962 and January 1, 1963, account being on duty and performing work on a legal holiday. Violation of Regulation 4-H-1.

EMPLOYES' STATEMENT OF FACTS: Claimant, Mrs. L. M. Schultz, is regularly assigned, second shift block operator at Kane, Pennsylvania. This is a six day, Group 2, position with assigned hours of 7:00 P.M. to 3:00 A.M., daily except Sunday. Claimant's rest days are Sunday and Monday.

Prior to December 25, 1962, Claimant received notice from the Supervising Operator at Buffalo, New York, stating:

> "Kane block station will be closed December 25, 1962. You will come out and work No. 580 only."

Prior to January 1, 1963, Claimant received from her Supervising Operator an identical notice, except that the date given in the notice was changed to read, "January 1, 1963."

Each notice purported to excuse Claimant from working on the holiday of Christmas, 1962, or the holiday of New Year's Day, 1963; however, as stated in the notices, she was specifically required to perform some work on each of those holidays — work which she normally performs on any other day of her workweek.

At meeting on September 5, 1963, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations denied the claim by letter dated October 10, 1963, a copy of which is attached as Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the sole question to be decided by your Honorable Board is whether the Claimant was properly paid under the provisions of Regulation 4-H-1 (b) for the service she performed on December 25, 1962 and January 1, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned, second-shift block operator at Kane, Pennsylvania, a six day position. Prior to December 25, 1962, Claimant received notice from the Supervising Operator stating "Kane Block Station will be closed December 25, 1962. You will come out and work No. 580 only." Prior to January 1, 1963, Claimant received an identical notice with date changed. These notices were served not less than sixteen (16) hours in advance of Claimant's normal starting time on such days. The assignment to work was for handling of mail. Claimant performed the service required by Carrier, and was paid a minimum allowance of two hours at the time and one half rate for the service — the actual service performed did not exceed two hours on each date. Claimant filed claim for eight hours' time at the punitive rate.

It is the contention of the Petitioner that Carrier violated the effective Agreement on both December 25, 1962, and January 1, 1963, in attempting to blank Claimant's position on those days while work remained to be performed at this location.

The following rules of the Agreement are in contention:

> "4-H-1. (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 . . .
>
> (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, . . . 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."
>
> "5-F-1. When employes, who are bulletined to work on the 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."

Though it is not denied that a notice was served on Claimant not less than 16 hours before the starting time of each holiday assignment, it is contended that such notices did not contain language sufficient to indicate a blanking of the positions. This is a specious argument, as a reasonable interpretation of the notice clearly indicates that no block operators' work was to be done on those holidays, and the only work required of Claimant on those days was the time required for the handling of mail for Train 580, which was a part of Claimant's regular work.

The only real question to be determined herein is whether Claimant's position could be blanked in whole or in part where there was some of her work remaining to be done on the holiday.

Inasmuch as Petitioner relies on Award 14106 as a precedent in support of the Claim, it might be well to review it. It was contended by the Claimant in that case that a notice was presented to him 16 hours prior to the beginning of employe's work day blanking his position on the holiday, that the employe at 7:30 on the morning of May 30, the holiday, was given further notice to report for two hours' work on the holiday. In Award 14106, we observe the following statement:

> "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."** (Emphasis ours.)

The instant claim differs from the one set forth in Award 14106 in that Claimant was notified in effect within the proper time required by 5-F-1 that the station at which she performed her work would be closed and that no work as a block operator would be required but that she would be required to spend some time during the holiday to handle the mail for Train 580, as she usually had done, thus blanking all the rest of the holiday except for the one item to be performed.

It has been recognized in many awards that, in the absence of any provision in an Agreement to the contrary, Carrier has the right to blank positions on holidays. This is evidenced by the following awards:

In a prior award, Award 7294 (Carter), we note the following:

> "The Organization contends that Claimants were regularly assigned by the Superintendent of the Carrier to work on holidays on their regularly assigned hours. This is a correct reflection of the record. . . . Whether the assigned work week is fixed by agreement or by bulletin, the Carrier under the foregoing rule may blank the holiday with impunity at any time. Awards 5668, 6385, 7033, 7134, 7136, 7137. A holiday within a work week creates an exception to the five-day work week rule. It may be blanked in whole or in part, or, it may be blanked and the occupant given a call to perform the necessary work. This holding is supported by the language of Rules 25 (e) and 26 (b), which state in effect that an employe required to work on a holiday shall be paid at the rate of time and one half with a minimum allowance of two hours. There is no basis for the contention that an employe used on a holiday is entitled to work eight hours at the pro rata rate. Awards 7033, 7136. He is entitled to eight hours' pay at the pro rata rate if he does not work on a holiday, and he is entitled to time and one half for the time worked, in addition thereto, with a minimum allowance of two hours. The rules governing work on holidays are special and controlling."

Also, in Award 7136 (Carter), there appears the following statement:

> "If there is work to be performed on a holiday, the employe otherwise assigned on that day is entitled to it. Award 7134. The Carrier can blank the holiday work without penalty. If the Carrier can so blank it for the whole day, it can do so for any part of it, as it is not considered as a part of the work week assignment."

There is no rule in the current Agreement which says that a position may not be blanked in whole or in part on a holiday nor is there any rule which guarantees eight hours' pay at the time and a half rate for work performed on a holiday, regardless of how long it takes to perform such work. To the contrary, 4-H-1 (b) provides: "Time worked by employes on the following holidays . . . 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." This would seem to indicate that it was within the anticipation of the parties to the Agreement that some work consuming less than eight hours might be required for which a method of payment is provided.

It appears, further, that the interpretation which the Petitioner is now seeking to place on 4-H-1 (b) is precisely that which was proposed by Petitioner during negotiations leading to the adoption of the controlling agreement. As late as August of 1959, Petitioner proposed a change in the rules which would allow to a bulletined employe a minimum of eight hours' pay at the time and a half rate when an employe was required to perform work on a holiday. This was not acceptable to the Carrier.

From the agreement it is evident that the only restriction placed on Carrier's right to blank positions on holidays in whole or in part is that contained in 5-F-1, wherein it is required that if employes who are bulletined to work on holidays are to be excused from working on holidays, they shall be notified not less than sixteen (16) hours in advance of their normal starting time on such days.

Carrier has settled prior claims on the property involving holiday work where either no notice or an improper notice has been given, but they have no precedential value in this case. Carrier can blank a position for a part of a holiday provided notice is given to the employe 16 hours or more prior to the employe's regular starting time, as provided for by the rules whether any prior notice has been given to the employe or not.

Under all these circumstances, we cannot find the Agreement has been violated, as Claimant has been paid for the work performed in compliance with 4-H-1 (b).

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1967.

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