

Award No. 15685
Docket No. TE-14564

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Boston & Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (B. and A. District), that:

1. Carrier violated the terms of the Agreement between the parties when it failed and refused to properly compensate B. N. Cornish for September 3, 1962.

2. Carrier shall be required to compensate B. N. Cornish for eight (8) hours' pay for the Labor Day Holiday, September 3, 1962.

EMPLOYEES' STATEMENT OF FACTS: Claimant B. N. Cornish was an extra man on the extra list. He was assigned to cover the Newtonville Station beginning August 20, 1962 and continued to work on this vacancy until Saturday, September 1, 1962. Under the Agreement he was immediately placed on the extra list. There was no vacancy on September 2nd and 3rd where Claimant B. N. Cornish was qualified to work and therefore he was idle on those two days. On September 3, 1962, D. N. Cornish was given a message to cover the Palmer Agency starting on September 4, 1962, and the message read:

"Cover Palmer Agency starting September 4, 1962 and stay on this position until further notice.

/s/ F. J. Haher
Chief Train Dispatcher"

Claim was made for eight hours' pay for the Labor Day Holiday, September 3, 1962. The claim was appealed to the highest officer and declined by him. Claim is now properly before your Board for final adjudication.

The following rules of the Agreement are quoted for your convenience:

For the reasons stated above, we cannot accept Mr. Stipek's denial and herewith refer this claim to you. Please advise payroll period in which payment will be made."

Carrier replied under date of January 16, 1963 as follows:

"Please refer to your letter of December 27, 1962, file 10-U-12, relative to claim on behalf of Mr. B. N. Cornish for eight hours' pay for the Labor Day Holiday, September 3, 1962.

There is no dispute as to the facts outlined in your claim. We do however disagree with the interpretation which you have placed on Article III, Section 1 of the Agreement of August 19, 1960 in order to support your claim. It is Carrier's position that Article III of the National Agreement of August 19, 1960, applies to persons employed on hourly or daily rated positions. Mr. Cornish accepted a monthly rated assignment from the extra list on September 4, 1962 and therefore was not available for an hourly or daily rated position on the day following the holiday.

Under the circumstances Mr. Cornish did not qualify for holiday pay under Article III of the Agreement dated August 19, 1960.

Claim accordingly is denied."

OPINION OF BOARD: On September 1, 1962, Claimant, an extra employe, completed a two week assignment on a monthly rated position of Agent at Newtonville, Massachusetts. He then reverted to the extra list from which employes were assigned in order of seniority. He performed no service on Sunday, September 2, nor on the Labor Day Holiday, Monday, September 3. On September 3, he received notice to cover the monthly rated position of Agent at Palmer, Massachusetts, beginning September 4. Carrier failed and refused to pay him for the Holiday. This, Petitioner contends, violated Article III of the August 19, 1960 Agreement. Carrier's defenses are: Article III applies only to "hourly and daily rated employes;" (2) Claimant worked a monthly rated position on the work days immediately preceding and following the Holiday. From this Carrier argues that Claimant had the status of a monthly rated employe and therefore he did not qualify for Holiday pay as provided for in Article III.

We find that an extra employe is not a monthly rated employe (Rule 4(b) of the basic Agreement). He is subject to assignments to monthly, hourly and daily rated positions. He is paid the rate of each position to which assigned. He does not enjoy the total emoluments deriving from a monthly rated position.

From our knowledge of the collective bargaining history of Article III we find that it was the intent of the parties that an extra employe is included within the contemplation of Article III unless he is restricted by agreement to only monthly rated positions' assignments. We will sustain the claim.

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 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 30th day of June 1967.