Award No. 15731
Docket No. CL-15926

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5889) that:

(a) Carrier violated the provisions of the Agreement between the parties of April 5, 1939, as amended and revised, and of the National Mediation Agreement of November 20, 1964, when it denied Ushers (Red Caps) O. V. Stewart and Fred Weitz the right to work their birthdays January 5 and 11, 1965, respectively, which dates were regularly assigned work days, and;

(b) Carrier compensate O. V. Stewart and Fred Weitz for one day's compensation each at rate and one-half as computed for Ushers for holiday work as set forth in Appendix 2 of the Usher Agreement of April 5, 1939, amended.

EMPLOYES' STATEMENT OF FACTS: Birthday of Usher O. V. Stewart occurred January 5, 1965, and the birthday of Usher Fred Weitz occurred January 11, 1965. The Carrier notified both employes they were not to work on their birthdays. January 5 and 11, 1965, were regular assigned workdays of both. They qualified for the holiday and were paid one day at pro rata.

There is an agreement between the parties effective April 5, 1939, governing wages and working conditions of Ushers (Red Caps) reprinted and revised as of February 1, 1962, copies of which have been furnished the Third Division. Rule 27 (a) and 29 (a) of the Agreement read:

"RULE 27. WORK WEEK

NOTE: The expressions 'positions' and 'work' used in this rule refer to service, duties or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes.

(a) General. The Carrier will establish, effective September 1, 1949, for all employes subject to this Agreement, a work week of forty (40) hours, consisting of five days of eight (8) hours each,

and revised as of February 1, 1962, is on file with your Board, and by this reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants' positions were blanked by Carrier on their respective birthdays, which became paid holidays under the National Mediation Agreement of November 20, 1964. Petitioner contends that Carrier violated applicable rules of the general Agreement between the parties, dated April 5, 1939, because Ushers allegedly are guaranteed the right to work eight (8) hours daily and forty (40) hours weekly.

Carrier maintains that Claimants received five (5) days' pay during the work week in question since they qualified for and were paid birthday-holiday compensation, and that no provision of the Ushers' Agreement prohibits the reduction in the Usher force where the position can be blanked on holidays.

Petitioner asserts that applicable rules of the Ushers' Agreement and practice for many years do not permit the reduction of days in the work week of the Ushers, even though they receive compensation for such days as holiday pay. Petitioner recites a brief history of the Ushers' Agreement in support of its position. It should be noted that the first Agreement between these parties concerning compensation was signed on December 17, 1940, and contains the following paragraph which Petitioner contends is applicable to the instant dispute:

> "The present method of assigning usher work, hours of service and starting time shall remain in effect."

Petitioner asserts that through the years changes in wages, hours of service, pay for overtime, pay for holidays and various other rules changes were negotiated by the parties, either on a local or national basis, but that none of these negotiations affected the right of ushers to work a forty (40) hour week in a week in which a holiday or holidays occurs. Moreover, it is undisputed that ushers were not required to lay off on holidays when the holiday fell on an assigned work day during the period between April 5, 1939 to December 31, 1964. Wherefore, Petitioner contends that the provisions of Article II–Holidays, Section 6(g), of the Agreement of November 20, 1964, is applicable, which provides as follows:

> "(g) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday."

In 1949, the parties revised the existing Agreement dated April 5, 1939 and the Mediation Agreement dated December 17, 1940, at which time the Forty Hour Week provisions of the present Agreement were adopted. Rule 27(a) provides as follows:

> "(a) General. The Carrier will establish, effective September 1, 1949, for all employes subject to this Agreement, a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements;

so far as practicable, the days off shall be Saturday and Sunday. This rule is subject to the following provisions:"

The right of Carriers to blank holidays under language similar to the abovequoted Rule involved in this controversy has been recognized by this Board in numerous Awards (Awards 8539, 11079, 13259 and 14597). Rule 27(a) of the controlling Agreement describes the minimum hours per day and days per week of the position held by Claimants. The rule does not guarantee that employes will work on holidays which occur during their regular work week, but only that they will be compensated for the weekly minimum hours of forty (40), consisting of five days of eight (8) hours each.

We find no subsequent reference to the language relied on by Petitioner from the December 17, 1940 Agreement or any other contractual language which might be construed as a guarantee of "work" every day except assigned rest days. Had the parties agreed upon such a requirement, it should have been embodied in an Agreement.

Petitioner's submission primarily consists of interpretations and conclusions not proven by substantial evidence of probative value. The burden of proving all essential elements of the claim rests with the Petitioner, which has not been met. Article II of the National Agreement of November 20, 1964, was not designed to compel Carrier to work employes on birthday-holidays, and Petitioner has failed to prove that Carrier is required to do so under existing rules and practices. Awards 8539, 10166, 11079, 15014 and 15060.

Accordingly, the claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1967.

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