



Award No. 15989
Docket No. TE-16537

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees' Union on The New York, New Haven and Hartford Railroad, that:

(a) Carrier violated the agreement between the parties when it failed and refused to properly compensate Mr. Fred Dray for work done on July 5, 1965, a regularly assigned rest day of his assignment, which was also a holiday.

(b) Carrier shall be required to compensate Mr. Fred Dray for eight hours at one and one-half times the rate of first trick at Signal Station No. 28 in addition to the amount already paid for working on July 5, 1965. Railroad Docket 10198.

(c) Carrier further violated the agreement between the parties when it improperly deducted \$23.08 from Mr. Fred Dray's earnings for the week ending November 27, 1965. This amount shall also be refunded to Mr. Dray. Railroad Docket 10198-A.

EMPLOYEES' STATEMENT OF FACTS: An agreement between The New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The claimant in this claim was regularly assigned to Operator-Leverman's job at Cos Cob Drawbridge, regularly assigned to work 5:00 A. M. to 1:00 P. M., with assigned rest days Monday and Tuesday. On Monday, July 5, 1965, claimant was called and required to work the assignment of first trick operator at S. S. 28, Greenwich. July 5, 1965, was being observed as the Fourth of July holiday and was also a rest day of his assignment.

of July Holiday. In view of the fact that the holiday did not fall on one of the regularly assigned work days of the claimant, the eight-hour pro rata holiday payment was improper and recovery was subsequently made. Claim was amended upon appeal before this Board for eight hours at the penalty rate. See Employees' Claims (a) and (b), Railroad Docket 10198.

As a consequence of handling the above claim, an additional claim was initiated on behalf of Mr. Dray under date of November 30, 1965. This claim was based upon an alleged violation of the applicable time limit rule of the schedule in that the deduction was not made until after the expiration of sixty days from the date of such payment. See Employees' Claim (c), Railroad Docket 10198-A.

The instant claim was denied on the property on the basis there is no rule or authority supporting the conclusion that the Carrier may not deduct erroneous payments when such payments are discovered.

Attached in exhibit form is the following pertinent correspondence:

EXHIBIT A — General Chairman's appeal in Claims (a) and (b), Railroad Docket 10198.

EXHIBIT B — Carrier's decision in Claims (a) and (b), Railroad Docket 10198.

EXHIBIT C — General Chairman's appeal in Claim (c), Railroad Docket 10198-A.

EXHIBIT D — Carrier's decision in Claim (c), Railroad Docket 10198-A.

The schedule agreement between the parties dated September 1, 1949, as amended, is on file with this Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Consistent with our holding in Award No. 15985, the Board finds that the Agreement was violated and Claimant is entitled to compensation under parts (a) and (b) of the Claim. He is not entitled to recover under part (c) of the Claim, and that portion is dismissed.

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 the Agreement was violated.

AWARD

Claim sustained consistent with the Opinion of the Board.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 8th day of December 1967.