Award No. 16127
Docket No. CL-16452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD
(Gulf District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6077) that:

1. Carrier violated the Clerks' Agreement when it refused to properly compensate Mr. C. L. McCarty and Mr. E. J. Creighton for service performed on September 6, 1965.

2. Carrier shall now be required to compensate Mr. C. L. McCarty and Mr. E. J. Creighton for 8 hours at the rate of time and one-half for service performed on Labor Day, in addition to the 8 hours' overtime received for working their rest day of September 6, 1965.

EMPLOYES' STATEMENT OF FACTS: C. L. McCarty is the regular occupant of Crew Dispatcher position at San Antonio, Texas, with rest days of Monday and Tuesday.

E. J. Creighton is the regular occupant of Accountant-Ticket Clerk position at San Antonio, Texas, with rest days of Sunday and Monday.

On Monday, September 6, 1965, Labor Day, one of the designated holidays covered by the rules, both claimants were required to work on their respective positions for which service they were compensated at the time and one-half rate.

On September 18, 1965, Division Chairman J. H. Lucas filed claim, taking the position that claimants were entitled to a day's pay at the time and one-half rate for service performed on September 6, 1965, one of their assigned rest days, and that they were also entitled to a day's pay at the time and one-half rate for service performed on September 6, 1965, Labor Day, one of the designated holidays under applicable rules. Employes' Exhibit No. 1.

On September 22, 1965, Superintendent Mr. G. T. Graham declined the claim stating in part — (Employes' Exhibit No. 2.)

In view of these facts, the claims are without merit and are respectfully declined.

Yours truly,

/s/ B. W. Smith"

10. Carrier refused payment as requested because the proper compensation has already been made and there is no merit in requesting an additional allowance of eight hours at the time and one-half rate.

11. Claim was progressed in the proper manner on the property and has now been progressed to your Board.

OPINION OF BOARD: September 6, 1965, was a designated rest day for the Claimants and was also a designated holiday. Claimants worked the day and were paid eight hours at time and one half. The validity of Brotherhood's claim for pay to Claimants for an additional 8 hours at time and one-half rests on applying rules which stem from national agreements as we did in Award No. 10541 and the vast majority of awards which followed. In unanimously sustaining such a claim in their Award No. 18, Public Law Board No. 32 (Rose), recently (January 16, 1968) said:

> "These awards (10451, etc.) interpret and apply rules which stem from national agreements. We are obliged to recognize that the industry has a substantial interest in the stability and uniformity of application of such rules while they are continued in effect. At this juncture of the precedents, this vital interest should not be disturbed because the question is raised by a claim on different property and in another forum."

In this case we are directed to Award No. 23 of Special Board of Adjustment No. 564 (Dolnick) (October 31, 1966) between the same organization and the same Carrier (although not its Gulf District as here) and involving essentially the same issue and in which the claim was denied; the argument is that Award No. 23 requires us to deny the claim here on the principle of **res judicata.**

We do not believe Award No. 23 was correct in its conclusion "that Award 10541 and those Awards which followed it did not adequately consider and discuss the subject and in that respect reached erroneous conclusions," nor in its decision on not to apply those conclusions. While different people might reasonably have reached different conclusions than those reached in Awards 10541, etc., the conclusions reached in Awards 10541, etc., were not so superficially arrived at nor so irrationally determined nor so clearly and palpably in error as to warrant their being overruled. Under the circumstances it is our opinion that the difference of opinion of the majority in Award No. 23 with Award 10541 and the majority which followed it was an inadequate justification for disturbing the stability and uniformity of application of rules stemming from national agreements. We do not believe, therefore, that Award No. 23 has disposed of the here involved issue on this property.

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 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 18th day of March 1968.

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