

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19226
Docket Number CL-19275

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6975)
that:

(1) Carrier violated the current Clerk's Agreement, at Beaumont, Texas, when it counted a holiday, November 27, 1969 (Thanksgiving Day), as a "work day" in giving required five (5) working days notice to abolish the following clerical positions;

(a) J. W. Cammack, General Clerk # 4; work week Sunday thru' Thursday-11:00 P.M. to 7:00 A.M.

(b) M. J. Battaglio, General Clerk #5; work week Friday thru' Tuesday-3:59 P.M. to 11:59 P.M.

(c) J. L. Battrell, General Clerk #6; work week Tuesday thru' Saturday-11:59 P.M. to 7:59 A.M.

(d) E. L. Sanders, 2nd Relief General Clerk; work week Thursday-3:59 P.M. to 11:59 P.M. #5, Friday and Saturday-11:00 P.M. to 7:00 A.M. #4, Sunday and Monday 11:59 P.M. to 7:59 A.M. #6,

to effectuate "rest day" changes, indirectly, that could have been made directly.

(2) Messrs. J. W. Cammack, M. J. Battaglio, J. L. Battrell and E. L. Sanders shall be compensated for eight (8) hours at pro rata rate to accomplish the fifth (5th) "working day" notice for job abolishment, in lieu of the holiday enumerated by the Carrier.

OPINION OF BOARD: On Monday, November 24, 1969, notice was posted abolishing the following positions at Beaumont, Texas effective with completion of assignment beginning Sunday, November 30, 1969:

J. W. Cammack	General Clerk
M. J. Battaglio	General Clerk
J. L. Battrell	General Clerk
E. L. Sanders	Relief Clerk

Thursday, November 27, 1969, Thanksgiving, a legal holiday, each of the Claimants worked eight hours except Battaglio who has a Thursday rest day. Those who worked were allowed eight hours at time and one-half rate in addition to eight pro rata hours holiday pay. Since Battaglio had a rest day on November 27, 1969 and did not work on that day he was allowed pro rata holiday pay only.

The principal basis for the claims asserted are the allegations that the Agreement requires full five working days notice in abolishing any position and that legal holidays cannot be counted as working days. Thus, the Organization contends that Carrier violated the Clerks' Agreement at Beaumont, Texas, when it counted a holiday, November 27, 1969 (Thanksgiving Day) as a working day in giving required five working days notice to abolish the above-mentioned clerical position.

The real question before us is whether a holiday is a working day or work day within the meaning of the five day notice provision in the parties Agreement.

Looking at the agreement as a whole, we find that holidays are put in a separate category. Rule 45(b) provides that days for employes may not be reduced below five per week, "excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

Moreover, when Carrier has an employe perform services on a holiday, the work is compensated at a punitive rate of pay and not at the rate of the regular working day.

We think it would be in error to hold that Thanksgiving, a legal holiday, has the same characteristics as a working day when Carrier may blank any position on a holiday and when, if worked, the pay is set on a wholly different basis. Furthermore, we believe that to ascertain the sense in which words are used one must look at the entire instrument of which they are a part.

The Board finds the notice given by Carrier to be deficient from the standpoint of time and that Carrier erred in counting Thanksgiving Day 1969, as a working day for the purposes of the five day notice requirement.

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;

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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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.