

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22270
Docket Number CL-22278

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8454, that:

(1) Carrier violated the Clerk-Telegrapher Agreement between the parties when, on November 27, 1975 (Thanksgiving Day), December 25, 1975 (Christmas Day), and January 1, 1976 (New Years Day), it closed the Telephoner-Switchtender Office at Virginia Lane, Cumberland, Maryland, and permitted and required employees not covered by the Agreement to perform the duties of Telephoner-Switchtender, and

(2) As a result, the incumbent first trick Telephoner-Switchtender, D. W. Ryan, at Virginia Lane shall be compensated eight (8) hours at time and one-half the prevailing rate on the dates in question.

OPINION OF BOARD: The Claimant is regularly assigned to the First Trick Telephoner-Switchtender position with hours 7:00 a.m. to 3:00 p.m., Thursday through Monday, with rest days Tuesday and Wednesday.

On the legal holidays established for Thanksgiving, Thursday, November 27, 1975, Christmas, December 25, 1975, and New Year's Day, January 1, 1976, the Carrier closed the office from 7:00 a.m. to 7:00 a.m., advising the incumbents of the three regular positions that they should not report for duty.

Work was, in fact, performed at this location on these holidays.

The Organization asserts a violation of Rule 4 (b-2) which states as follows:

"(b-2) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

The Carrier discusses the exclusivity test, the applicability of which has been rejected by this Board.

The main thrust of the argument advanced by the Carrier is that we are involved with a question of shared responsibility. It is urged that employees other than the Claimant share the responsibility for the performance of the work in question. The Organization asserts that shared responsibility is another way of injecting the exclusivity test.

We are persuaded that the Claimant should have been called under the provisions of Rule 4 (b-2).

The Carrier calls our attention to Rule 8 (c) and suggests that if compensation is ordered by the Board, it should be pursuant to Rule 8 (c) and not as requested in Paragraph 2 of the Statement of Claim.

Rule 8 (c) reads as follows:

"(c) Regularly assigned employees called to work on Sundays, when Sunday is one of their designated rest days, or specified holidays shall be allowed a minimum of four (4) hours at time and one-half rate for four hours or less work, and if worked over four (4) hours, a minimum of eight (8) hours at time and one-half shall be paid."

It is held that the Carrier violated Rule 4 (b-2) of the Agreement, and that Rule 8 (c) should be applied in determining the appropriate remedy in this case.

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 the Agreement was violated.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1979.