

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22699
Docket Number CL-22500

William M. Edgett, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8556) that:

(a) The Carrier violated the Clerical Agreement when they did not apply the provisions of the General Agreement and Memorandum Agreement dated September 1, 1949 and arrange to allow T. D. Towers 4 days in excess of 252 Annual Work Days in 1975.

(b) The Carrier should now recompute T. D. Towers' pay for the Year 1975 and allow him \$120.50 for 2 days pay due to working 4 days in excess of the 252 Annual Work Days in 1975.

OPINION OF BOARD: Employees claim that Carrier did not properly apply the General Agreement effective March 1, 1972 and the Memorandum Agreement effective September 1, 1949 when computing Claimant's pay for calendar year 1975.

During the calendar year 1975 Employees with rest days of Monday and Tuesday (such as Claimant herein) had a total of 256 working days. Carrier paid Claimant only two days' additional pay which represented the number of working days for Claimant in excess of 254 in the year.

Employees claim that Claimant should have been allowed four days additional pay, in other words, payment should have been made to Claimant for all working days in excess of 252 in the year.

The arguments relative to timeliness of the claim and past practice are resolved adversely to Carrier.

We find that this claim for this Claimant was properly and timely filed.

The Agreement appears to be peculiar to this property and needs to be set forth in some detail for a proper analysis and understanding.

The parts pertinent hereto read in part, as follows:

"2 - In years having more than 254 working days, employees covered by this memorandum of agreement will be paid an additional day's pay at straight time rate on the basis provided by Rule 43, Section (e), for each such day in excess of 254 . . .

* * * * *

"3 - The monthly rate of an employee will be compensation for eight hours or less per day (as assigned by bulletin) for the number of working days in a month. A month shall be the number of days therein less rest days and the holidays specified in Rule 39(b) . . .

* * * * *

"5 - The employees covered by this agreement have a basic work month of 169-1/3 hours . . .

* * * * *

"7 - It is not the intent of this agreement that an employee will receive any less compensation during the course of a year by reason of this agreement than he would have received had he been paid on a daily basis as provided in the rules of the General Agreement and no less favorable consideration shall result therefrom."

The 254 working days was arrived at by taking 365 days and deducting 104 rest days and the then current 7 holidays therefrom. The seven holidays were those specified in Rule 39(b). The 169-1/3 hours was arrived at by multiplying 254 working days by eight and dividing by twelve.

These figures have changed over the years, nevertheless the September 1, 1949 Memorandum of Agreement still reads as set out above. Carrier has, however, continued to apply Section 2 of the September 1, 1949 Agreement as written, i.e., though Carrier recalculated and adjusted Sections 3 and 5 to reflect additional holidays it did not recalculate Section 2. The number of holidays listed in Rule 39(b) has changed; the working days per month have changed; the hours comprehended as a basic work month have changed and the computations for arriving at the monthly

rate and the straight time hourly rates have changed. Consequently parts of the September 1, 1949 Memorandum have been automatically adjusted, insofar as the record shows, even though no change has been made in the language of the various sections thereof.

In view of Section 7 we hold that the September 1, 1949 Memorandum operates to provide automatic adjustments not only to Sections 3 and 5 but also to Section 2. As of the date of this claim there were nine (9), rather than seven (7), holidays specified in Rule 39(b). Thus there were, by use of the same formula used to arrive at 254 working days, i.e., 365 less 104 rest days and 9 holidays, only 252 working days in 1975 and Claimant, had he been paid on a daily basis, would have received 256 days pay. He therefore was entitled to the two additional days prayed for in his claim and his claim is sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.