Award No. 63
Docket No. CL-9975

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated Rules of the Clerks' Agreement at Centralia, Illinois, when it refused to compensate Ticket Clerk L. B. Watts in accordance with the provisions of Article 7(a) of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, for December 25, 1956.

(b) L. B. Watts be compensated for wage losses sustained on December 25, 1956, representing a day's pay at penalty rate. (Pro rata rate of position $16.12 per day).

OPINION: There are employed at the Passenger Station, Centralia, Illinois, a force of employes who perform the ticket sales, baggage and mail handling duties necessary to the operation of the station. Claimant Watts is assigned a work week of five days on a seven-day position. He is regularly assigned to the position of Ticket Clerk with rest days Wednesday and Thursday. On Christmas Day, 1956, Claimant Watts was on vacation, and his position was filled on that day and the other days of his vacation.

Claimant Watts was paid one day at pro rata rate for vacation pay for December 25, 1956. A claim was filed alleging that Claimant was entitled to be paid an additional day at penalty rate for December 25, 1956.

It is the position of Employes that the Carrier violated Rule 7(a) of the National Vacation Agreement when it refused to compensate Claimant a day's pay at penalty rate on December 25, 1956; that the established procedure for filling vacancies on holidays is as follows: first by the regular incumbent if it occurs within his work week by assignment, or by the relief clerk if it occurs on a relief day; second by the senior qualified regular clerk; third by the senior qualified extra or furloughed clerk.

The Employes also urged that the agreement contains a rule specifically setting up the procedure for filling vacancies on unassigned days, which rule reads as follows:

"Rule 37 (f) Work on Unassigned Days--

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by

an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

and that holidays cannot be considered an unassigned day.

It is the position of the Carrier that holiday work is unassigned, and that Clerk Watts is not entitled to an additional day's pay at overtime rate for the holiday that occurred in his vacation period.

The 1942 interpretation of the National Vacation Agreement reads as follows:

"Article 7(a) provides: 'An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.'

"This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

Rule 43 (B) of the agreement reads as follows:

"(b) Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below five (5) per week, except<u>ing that this number may be reduced in a week in which holidays occur by the number of such holidays.</u>" (Emphasis added.)

While under Rule 43 (B) the Carrier retains the sole right to reduce the days of a work week by the number of holidays in such work week, the record shows that the position occupied by the Claimant has always been worked on holidays.

We are of the opinion that the issue involved in this case is controlled by Second Division Award No. 2566 wherein it was said:

"Claimant is the second shift engineer in the power plant at the Silvis shops. It is operated continuously throughout the year. July 4, 1955 fell on one of claimant's assigned work days while he was on vacation. The vacation relief worker filling the position worked that day. It appears that the engineers assigned around the clock have always worked on holidays falling upon one of their assigned days of work.

"Under such circumstances the work on that holiday cannot be considered casual or unassigned overtime such as was involved

in our Award No. 2212, upon which the carrier relies. It is assigned overtime for which claimant must be paid under Article 7(a) of the vacation agreement and the interpretation thereof agreed to on June 10, 1942."

FINDINGS: The Special Board of Adjustment No. 170, after giving to the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the agreement was violated.

AWARD: Claim sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 170

/s/ Edward M. Sharpe

Edward M. Sharpe - Chairman

/s/ R. W. Copeland
R. W. Copeland - Employe Member

/s/ E. H. Hallmann
E. H. Hallmann - Carrier Member

October 29, 1958
Chicago, Illinois