SPECIAL BOARD OF ADJUSTMENT NO. 266

406-3

AWARD NO. 52
CASE NO. 47
Sub-2333 TE-9817
417/2-1 (51-57)

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim No. 1

(a) The Carrier violated the Agreement between the parties when on Thursday, Nov. 22, 1956 (Thanksgiving Day) it blanked the second shift position at Cortland Ticket Office, Cortland, New York, a seven day position.

(b) The Carrier shall, because of the violation set forth above, and for each subsequent holiday blanked, compensate C. H. Cooper, or his successor, eight (8) hours at the time and one-half rate in addition to the eight (8) hours pro rata paid him.

Claim No. 2

(a) The Carrier violated the Agreement between the parties when on Thursday, Nov. 22, 1956 (Thanksgiving Day) it blanked the first, second and third shift positions at Jamesville, New York.

(b) The penalty claimed for the above violation is included in Claim No. 2 of Docket TE-8241 now before this Board, in the language "And on subsequent holidays", and is by reference thereto included in this submission as if quoted here word for word.

Claim No. 3

(a) The Carrier violated the Agreement between the parties, when on Thursday, Nov. 22, 1956 (Thanksgiving Day) it blanked the first shift position in Scranton Yard Office, Scranton, Pa., a six day position.

(b) The Carrier shall, because of said violation set forth above, and for each subsequent holiday blanked, compensate W. E. Dougher or his successor, eight (8) hours at the time and one-half rate in addition to the eight (8) hours at the pro rata rate paid him."

Claim No. 4

(a) The Carrier violated the Agreement between the parties when on Thursday, Nov. 22, 1956 (Thanksgiving day), it blanked the third shift position "Z" Office Scranton, Scranton, Pa., a seven day position.

(b) The Carrier shall, bec ause of said violation set forth above and for each subsequent holiday blanked, compensate J. J. McCrone or his successor eight (8) hours at the time and one half rate in addition to the eight (8) hours at the pro rata paid him."

OPINION OF BOARD:

In accordance with our ruling in Award 12, those of the subject claimants, or their successors, occupying seven day positions on which holidays were blanked beginning as of Thursday, November 22, 1956, are entitled to additional compensation in the amount of 8 hours pay at pro rata rate for each such blanked holiday. No additional compensation is due for those claimants, or their successors, occupying five or six day positions. The additional compensation being awarded here to the incumbents of seven day positions applies to blanked holidays only so long as such positions continue to be "filled seven days per week" as set forth in Article 8, Section 1(d).

AWARD: Claims sustained in part and denied in part as stated above.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

/s/ W. I. Christopher
W. I. Christopher, Employee Member

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

New York, N. Y.
Nov. 25, 1959

Award No. 52

PARTIAL DISSENT

The undersigned enters a partial dissent to the foregoing award because of the holding that claimants are entitled only to additional compensation of eight hours' pay at PRO RATA RATE for each such blanked holiday. Claimants' pay for holidays is predicated on the Guarantee rule (Article 24) reading in part as follows:

> "A regularly assigned employe shall receive one day's pay within each twenty-four hour period, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight hours as per location, except on his rest days when occupying positions covered by Section 1 (d) of Article 8, * * *."

Section 1(d) of Article 8 refers to seven-day positions. The Guarantee rule thus assures a regularly assigned employe occupying a seven-day position a day's pay on each holiday occurring within his workweek except such as may fall on his rest days. The award recognizes that claimants are entitled to be paid for holidays they were not permitted to work. My colleagues, however, have seen fit to deny the time and one-half rate of pay for holidays in favor of an arbitrary rate of straight time. There is no basis for allowing anything less than time and one-half. The rule guarantees pay, not work. Working a holiday is not a condition precedent to being entitled to the pay guaranteed for such day. The established rate of time and one-half for holidays has been in effect since March 1, 1945.

The only pro rata pay applicable to holidays is that specified in the August 21, 1954 agreement which this Board has declared to be in addition to compensation previously negotiated. Holidays that fall within the scope of the Guarantee rule applying to seven-day positions (as here) are payable at the time and one-half rate because there is no other rate decreed for holidays whether worked or blanked. As stated by the Third Division in Award No. 7134:

> "The contract value of holiday work lost is time and one-half. In effect, the regular rate for holiday work is time and one-half. It does not involve the claim for an unearned penalty as in the case of a claim for time and one-half for overtime lost. We conclude that the claim should be sustained at the time and one-half rate."

In other awards of the Third Division the rate of time and one-half for holiday work lost has been upheld:

Award 5837:

> "The rate under the agreement on a holiday was time and one-half of the pro rata rate. There was under the agreement no other rate. It could not be reduced no matter who performed the work. The pro rata rate could under no circumstances apply to it."

Award 6004:

> "The situation is different in respect to holiday work; here either group of workers - those improperly used or those entitled to the work - would be paid at the premium rates named in the agreement."

Awards 6854 and 6855:

> "Many recent awards of this Division hold that the penalty for work lost is the pro rata rate; except as to the holidays lost which shall be at the time and one-half rate."

Award 7030:

> "The claim being for work lost, the penalty is the pro rata rate thereof, except for any holiday work involved. In case of the latter, the time and one-half rate applies."

Award 7188:

> "The claims will be sustained at the pro rata rates, except as to holidays which shall be at the time and one-half rate."

Award 8287:

> "Your referee has recently approved penalty payments in two holiday-work cases--Awards 8271 and 8272--and has not been persuaded that penalty payment under the circumstances herein is not justified.
>
> As we noted at the outset, Carrier admitted that the work involved was work 'which claimant was entitled to perform.' That is a contract right and the contract requires time and one-half pay. Award 7134."

Award 8411 covered an identical dispute where the carrier blanked positions on holidays paying claimants only the straight time pay due under the 1954 agreement. Claim was made for the additional compensation of time and one-half under the Guarantee rule. The claim was sustained.

Award 8859, directly in point with the claims here, also had to do with claims for time and one-half for holidays which claimants were prevented from working. The Board held that the carrier had violated the agreement in failing to pay eight hours at the time and one-half rate for each day of holiday work lost.

Award No. 7, Special Board No. 122, covered a dispute where claimant was held off her assignment on a holiday. That Board held that the proper recovery for the mis-handling was time and one-half rate.

See also Awards 5634 and 5900 as declaring the holiday rate to be time and one-half.

It is the duty of this Board to resolve the subject matter of this dispute, as to the collateral consequences, in the same light as if the Carrier had done what it ought to have done. There is no uncertain value of a holiday's work lost. It is clearly measurable and is not penal to any degree. The time and one-half

rate for holiday work was adopted by the parties many years ago and that is the contract value of the work lost in these instances. When this Board finds that the claimants were suspended on the holidays in question and that the Guarantee rule is properly invocable because of those suspensions, then the holiday pay must be allowed the claimants "according to location occupied or to which entitled." If there is contractual authority for anything less it should be duly set forth in the Opinion sufficiently to warrant a departure from the many awards to the contrary.

W. D. Christopher

Employe Member