

Referee Irwin M. Lieberman

PARTIES TO DISPUTE: Railroad Yardmasters of America
 Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America:

SYSTEM DOCKET 475EASTERN REGION - HARRISBURG DIVISION CASE H-10/72

Letter of denial from Trainmaster, F. W. Carley (March 2, 1972) relative to holiday pay claims for Yardmasters G. D. Yontz, Jr. and D. J. Lewis, III, for service performed on February 21, 1972.

OPINION OF BOARD: Claimants, carried on Carrier's Yardmaster's Extra List at Reily Street in Harrisburg, Pennsylvania, worked on Washington's Birthday, February 21, 1972. They were compensated at time and one-half for service performed on that day but were not paid eight hours holiday pay for that day, thus giving rise to this dispute.

part: The November 29, 1967 Agreement in Article III provides in pertinent

"Section 1.

"Effective January 1, 1968, yardmasters shall be paid at the rate of time and one-half for working on any of the following enumerated holidays, in addition to their regular pay:

New Years Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	Employee's birthday

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above numerated holidays.

"Section 4.

"In instances when a recognized holiday, or the day such holiday is observed by the State or nation, falls on an assigned work day of a regular yardmaster assignment, the carrier shall have the right to blank such position on that day and the yardmaster then holding such assignment shall be paid for that day on the basis of his regular straight time rate of pay, provided he does not render other compensated service for the railroad during the hours of such yardmaster assignment. If any work of such position is performed by other than the incumbent on the shift on which it is blanked, it shall be performed in accordance with existing schedule rules."

The September 20, 1968 Agreement modified Article III above by the addition of Section 6, which provides in part:

"Section 6. (a) When any of the holidays enumerated in Section 1 hereof falls on a rest day of a regularly assigned yardmaster, he shall receive, in addition to his regular pay, one day's pay at the straight time rate of his regular position, provided he fills his regular position on the last workday immediately preceding and on the first workday immediately following the holiday falling on a rest day. A regularly assigned relief yardmaster who qualified for pay for a holiday falling on a rest day in accordance with the foregoing shall be paid at the straight time rate of the position he filled on the last workday immediately preceding the holiday falling on a rest day. In addition to the one day's pay at the straight time rate for the rest day holiday herein provided, if a regular yardmaster works as yardmaster on his rest day he shall be entitled to one time and one-half payment for service performed by him pursuant to Section 3 hereof.

"(b) When any of the holidays enumerated in Section 1 hereof falls during a regularly assigned yardmaster's vacation period, he shall receive, in addition to his regular pay, one day's pay at the straight time rate of his regular position, provided he fills his regular position on the last workday immediately preceding and on the first workday immediately following his vacation period. A regularly assigned relief yardmaster who qualified for pay for a holiday falling during his vacation period in accordance with the foregoing shall be paid at the straight time rate of the position he

filled on the last workday immediately preceding his vacation period.

"(c) The rest day holiday and vacation holiday pay provided by this Section 6 shall not apply to extra yardmasters, or to regularly assigned yardmasters who may be eligible for holiday pay falling on a rest day or during a vacation period pursuant to other schedule agreements.

Petitioner asserts that Claimants should have been paid eight hours at straight time under the clear terms of Article III Section 1 supra. Further it is pointed out that under the Scope Rule of the Agreement: "The term 'Yardmaster', as used in this Agreement, shall include Yardmaster, Assistant Yardmaster, and employes working as relief or extra Yardmasters, and Assistant Yardmasters". It is argued that each yardmaster position has a fixed rate of pay and the individual performing service on that position is paid accordingly, regardless of whether he is a yardmaster, relief yardmaster or extra yardmaster. Petitioner also points out that Claimants herein are extra board yardmasters and do not work in any other craft employed by Carrier, as distinct from certain yardmasters who also are employed by Carrier under other agreements. The Organization states that Section 6(c) of the 1968 National Agreement was designed to prevent overtime payment under two separate agreements, and has no applicability to the instant dispute.

Carrier asserts that there are no provisions in the applicable Agreements granting an extra yardmaster eight hours straight time pay in addition to time and one half for service performed on a holiday. Carrier argues that the term "regular pay" applies solely to regular yardmaster assignments and not to extra yardmasters. Carrier states that extra yardmasters' work days may vary from week to week and when he works he receives the rate of the position he works; e.g., when he works on a holiday he receives the time and one-half rate of the position he works. Carrier points to Section 6 of the 1968 Agreement supra arguing that Sections 6(a) and (b) specifically relate to "regularly assigned" yardmasters and further 6(c) specifically excludes extra yardmasters from the application of Section 6. This is interpreted to signify that the parties intended "regular pay" as used in Section 1, to apply only to regularly assigned yardmasters. Carrier concludes that extra yardmasters have no regular pay and hence have no right to holiday pay.

In its submission Carrier states that "the term 'regular pay' has always been understood to mean that compensation which accrues to a regular yardmaster assignment". We note that Section 4 of Article III quoted above provides that in the event a yardmaster position is blanked on a holiday (on an assigned work-day), any work on such position performed by other than the incumbent "...shall be performed in accordance with existing schedule rules". It appears clear that the parties intended that an extra yardmaster filling in on a holiday should be compensated in accordance with the rules exactly what the position called for. Section 1 of Article III does not distinguish among the various categories of yardmasters defined in the Scope Rule but provides that yardmasters as such will all be paid time and one-half for working on a holiday in addition to their regular pay. Regular pay, as Carrier stated above, is the compensation accruing to the assignment in question. We note that Award 2628, involving the same parties and a related issue, was cited by Carrier; however that dispute must be distinguished from that herein since Claimant in that dispute performed no work on the holiday. Further, we find that the provisions of Section 6 of the 1968 Agreement, supra, are not applicable to this dispute since that section relates only to holidays falling on rest days or during vacations. We conclude, therefore, based on the reasoning above, the claim must be sustained; Claimants should be paid the "regular pay" accruing to the assignment they were working on February 21, 1972 which should include Holiday pay, as well as the time and one-half they received.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

Dated at Chicago, Illinois,
this 8th day of May 1975

By: 