

Award No. 1929

Docket No. 1816

2-Pull-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Pullman Company improperly paid off their employes at the California Avenue Yards on February 12, 1954, instead of on February 11, 1954, the proper pay day.

2. That accordingly the Pullman Company be ordered to compensate Electricians R. Koontz and L. S. Triwush in the amount of two hours and forty minutes pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: February 13, 1954, was the designated calendar time for pay day at the California Avenue Yards, Chicago, Illinois; however, since February 13 fell on a Saturday, which is an established bank holiday, the carrier advised the employes verbally that pay day would be held on February 12, 1954, which is supported by Exhibit A attached.

The Pullman Company paid its employes on February 12, 1954 (Lincoln's Birthday) which is a bank holiday.

Electricians R. Koontz and L. S. Triwush (hereinafter referred to as the claimants), off on one of their rest days on February 12, 1954, were required to make the trip to the coach yard to get their checks.

The dispute was handled with company officials designated to handle such affairs, who all declined to adjust the dispute.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier in the instant dispute violated the provisions of the current agreement when it failed to pay the employes at the California Avenue Yards on February 11, 1954, when the regular pay day, which was February 13, and February 12, 1954, the day prior thereto, fell on bank holidays, as Rule 18 reads as follows:

issue pay checks prior to Saturday, February 13. In fact, the company's action in issuing pay checks to employes on February 12 rather than on February 13 was in the interest and for the convenience of employes, not an action required by the rules of the agreement.

The first sentence of **Rule 24. Service Performed Outside of Bulletined Hours, Rest Days and Holidays** (a) sets forth that all service performed outside bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in the rules hereinafter set out. This sentence clearly is not applicable to this dispute in that the company did not assign or require employes to perform work for the company outside bulletined hours. The second sentence provides that service performed by an employe on his rest days, except where days off may be accumulated under paragraph 3 of Section (i) of Rule 21, and service performed on the following legal holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half. It should be noted that the legal holidays recognized by the organization and by the company and specifically listed in Rule 24 do not include February 12, which date is not a legal holiday as that term is used in the agreement between The Pullman Company and its electrical workers. In this connection, see Foreman VanGrimbergen's letter of decision, dated March 18, 1954, in which he pointed out that Saturday, February 13, is not an established bank holiday in that many banks in Chicago and the surrounding area remain open on Saturday and, further, that February 12 is not a legal holiday listed in Rule 24 of the agreement or a full bank holiday inasmuch as all banks are not required to close on that day.

It is the position of the company that the organization's arguments are without merit. As previously pointed out, no rule of the agreement required the company to pay its employes prior to the regular pay day (February 13, 1954); either on February 12 or on February 11. Further, the organization's request that Koontz and Triwush be paid 2:40 hours at the rate of time and one-half is apparently improperly based upon **Rule 33. Calls**, which rule is not pertinent to this dispute in that neither Koontz nor Triwush was "notified or called to perform service" or "required to report for service." Any action which the employes took was unrelated to company business and on their own responsibility. If these employes had so requested, their checks would have been mailed to them. Apparently, however, the employes in question preferred, for some reason or other, to call at the office for their checks, instead of having the company mail them to their place of residence. It cannot properly be held that in receiving their pay checks on their day of rest such action constituted service at the demand or in the service of the carrier and as such is compensable under the cited rule. See Third Division Award 5696.

CONCLUSION

In this ex parte submission the company has shown that no rule of the agreement required the company to issue pay checks to Electricians Koontz and Triwush, February 11, 1954. Additionally, the company has shown that under the facts of this case, no rule of the agreement required the company to issue pay checks to Koontz and Triwush prior to the date regular semi-monthly checks are issued to electrical workers in the Chicago Northern District. Further, the company has shown that the rules cited by the organization, Rules 17 and 18, and the remaining pertinent rules of the agreement, with particular reference to Rules 24 and 33, support management's position.

The claim of the organization in behalf of Electricians Koontz and Triwush is without merit and should be denied.

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

The carrier or carriers and the employe or employes 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 regular pay days for claimants were the 13th and 28th days of each month. Applicable Rules 17 and 18 provided that employes should be paid off during their regular working hours and that should a regular pay day fall on a Sunday, legal holiday or bank holiday, employes should be paid off on the preceding day.

February 13, 1954 came on Saturday and payment was made on Friday, February 12 to those at work on that day. Claimants were off on Friday, which was one of their rest days, and assert that they were forced to come to the yards on their relief day to get their pay.

It is claimed that carrier violated the agreement "when they failed to pay the employes at the California Avenue Yards on February 11, 1954, when the regular pay day, which was February 13, and February 12, 1954, the day prior thereto, fell on bank holidays," and should be ordered to compensate claimants in the amount of two hours and forty minutes pay at the time and one-half rate.

Carrier denies that Saturday, February 13 was a bank holiday and claimants, who had the burden of proof, made no showing to support their assertion, so their claim must fail. Further, the voluntary payment by carrier a day in advance of the regular pay day did not change the date of the regular pay day, and the rule does not require payment two days in advance of the regular pay day in case both it and the preceding day should be holidays.

Hence we find no rule violation and need not consider the validity of such a claim had violation occurred.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1955.