

Award No. 2485

Docket No. 2307

2-CofG-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, A. F of L.-C. I. O. (Electrical Workers)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements, Electrician W. L. Ringwald was improperly denied Holiday pay on Thanksgiving Day, November 25, 1954, although compensation paid by the Carrier was credited to the work days immediately preceding and following said holiday.

2. That accordingly, the Carrier be ordered to make Electrician W. L. Ringwald whole by compensating him at the applicable rate of pay for said holiday.

EMPLOYEES' STATEMENT OF FACTS: Electrician W. L. Ringwald hereinafter referred to as the claimant, was not paid holiday pay for Thanksgiving Day, November 25, 1954, in his holiday back-time pay check which was delivered to him by the carrier on January 14, 1955.

This dispute has been handled in accordance with the provisions of the agreement effective September 1, 1949 as subsequently amended with the proper officers of the carrier including the highest designated carrier officer with whom such matters may be handled with the result that this officer has declined to make a satisfactory adjustment of this dispute.

POSITION OF EMPLOYEES: It is submitted that the claimant was assigned to fill the job in question temporarily in accordance with the rights accruing to shop craft employes under the current agreement, with particular reference to Rule 32, which reads as follows:

"Should an employe be assigned temporarily to fill the place of a foreman, he will be paid his own rate—straight time for straight time hours and overtime for overtime hours—if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said position shall be filled only by mechanics of the respective craft in their departments."

CONCLUSION

The carrier has first shown that the claim is barred under the applicable agreement, and second, that the basis of pay was properly ascertained and the claimant paid the higher of the two rates as contemplated by Rule 32, and so figured through the years for all employes covered by the rule. Further, that claimant sustained no loss whatsoever and in fact profited by receiving the foreman's rate. There is no doubt that the employes' claim is wholly without merit.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim for—1) Under the Time Limit Rule, or 2) due to lack of merit.

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 claimant, an electrician, was temporarily assigned to a foreman's position during the week of November 23, 1954. During that week he was paid at the foreman's rate of pay which is greater than that of an electrician. Thanksgiving Day, a holiday, was November 25, 1954. Electricians are entitled to holiday pay for that day. Foremen do not receive holiday pay. The claimant received the foreman's higher rate of pay and also wants the holiday pay received by electricians. The agreement does not provide for such dual payment. Since the claimant was working as a foreman that week, and since he was paid the foreman's rate of pay he cannot now reasonably contend that for one day in the week he should be paid at some other rate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2485

The majority states that claimant, an electrician, was temporarily assigned to a foreman's position during the week of November 23, 1954. Claimant was not permitted to work on Thanksgiving Day, a holiday, November 25, 1954. Foremen do not receive holiday pay. Electricians are entitled to holiday pay for Thanksgiving Day.

Rule 32 of the schedule under which claimant holds seniority, anticipates service as a temporary foreman without establishing any seniority as such and retaining his status and rights as an electrician. A strict application of Article II of the August 21, 1954 agreement resolves the dilemma. The applicable provisions are as follows:

"Section 1. . . ., each regularly assigned hourly and daily rated employe shall receive eight hours pay . . . for each . . . holiday

(which) falls on a workday of the work week of the individual employe:

New Year's Day . . . Thanksgiving Day, Christmas.

Section 2(a). Monthly rates . . . weekly rates . . .

Section 2(b). All other monthly rates . . .

Section 3. An employe shall qualify . . . if compensation . . . is credited to . . . days preceding and following . . ."

Claimant "was regularly assigned" on claim dates. The assignment was by virtue of his seniority held under the electrical workers schedule and his seniority status was not extinguished by the fact that he was doing work other than electrical work. This finding gives effect to the obvious intention of the parties as expressed in their agreement establishing paid holidays.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink