

Award No. 2995
Docket No. 2708
2-PULL-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they:

(a) Refused to compensate 15 employes named in appeal for changes of shift set forth in the appeal of June 7, 1956.

(b) Refused to compensate employes named in appeal for Holiday pay on dates set forth in the appeal of June 7, 1956.

(c) Refused to compensate employes named in appeal for hours not permitted to work on dates set forth in the appeal of June 7, 1956.

2. That accordingly, the Carrier be ordered to compensate said employes in the amounts specified and at the rates of pay set forth in appeal dated June 7, 1956.

EMPLOYEES' STATEMENT OF FACTS: At Oakland, California, the following employes, hereinafter referred to as the claimants, worked as listed on the dates in question.

Cleaner M. Adams

On Saturday, December 24, 1955, assigned to position OAK 14—7:00 A.M. to 3:00 P.M.—Wednesday through Friday, with rest days of Monday and Tuesday. On Sunday and Monday, December 25 and 26, 1955, assigned to position SF 12—8:30 A.M. to 5:00 P.M.—Wednesday through Friday, with rest days of Monday and Tuesday. On Wednesday, December 28, assigned

Friday and Saturday) should be paid 8 hours at the straight time rate for his former bulletined hours (7 A.M.-3 P.M.) December 26; 8 hours at the rate of time and one-half for his regular bulletined hours (7 A.M.-3 P.M.) December 26; and 8 hours at the rate of time and one-half for working 4 P.M.-12 M., December 26. In other words, claim is made for 32 hours for December 26. At this point the company wishes to state that for December 26 Westbrooks was paid 20 hours, 8 hours' holiday pay under the "Fringe Benefit" Agreement and 8 hours at the rate of time and one-half as provided in Rule 4 for work performed in Position SFE-7 (Exhibit C, p. 7). Additionally, the organization in its letter of appeal (Exhibit G) claims 4 hours' pay at the straight time rate for change of shift December 25, 1955, and 4 hours' pay at the straight time rate for change of shift when he reported for Position Oak. 3 on December 27, 1955. Since company records show that Westbrooks did not report for work on December 25, no adjustment is due him for that date. In connection with the organization's claim for an additional 4 hours' payment on December 27, when he reported for Position Oak. 3, the fact should be noted it was agreed between the parties that employes would not be entitled to additional payment for change of shift when returned to their former positions on December 27 (Exhibit C, p. 6). Also, see pages 6-12 of Exhibit C in connection with the manner in which all employes in this dispute were paid and the amounts claimed. In the two instances where 4 hours' additional payment was due the employe for a change in shift, adjustments in that amount have been made (Exhibit G). Information relative to the manner in which all employes involved in this claim were paid for work performed during the period December 25-28 and the manner in which the organization claims the employes should be paid is contained in Exhibit K submitted herewith.

CONCLUSION

In this ex parte submission the company has shown that management properly abolished certain positions, effective December 25, 1955, under Article IV of the agreement, dated November 2, 1954. Also, the company has shown the employes involved in this dispute were properly assigned to new positions and properly paid for work performed by them in the new positions. The organization's claim that the 15 positions involved in this claim were improperly abolished and that the employes involved are entitled to additional compensation for the period in question 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 employ 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 fifteen employes involved in part (a) of the claim were moved to other positions when their positions were abolished effective December 25, 1955. The Company paid them shift change premium under Rule 13 for the 25th but declined to pay such premium when they were restored to their original positions on the 27th because of an alleged agreement with the local committee to return all employes to their original positions after the emergency fur-

lough ended. (The local committee deny making such an agreement and in any event it has no authority to change the rules in the agreement. Accordingly part (a) of the claim will be sustained.

Part (b) of the claim must be denied because it involves claims for holiday pay in cases where the holiday occurred on a rest day of the position to which then assigned or cases of voluntary absence from work on the day preceding the holiday.

Part (c) of the claim involves an employe who did not get actual advance notice of the abolishment of his position because he could not be contacted by telephone or special messenger on a rest day. He appeared at 7 A.M. on the 25th and was advised of assignment to a position starting at 11 A.M. He left and did not work that position. Under the circumstances the claim for pay for the 25th is without merit.

AWARD

Part 1(a) of the claim sustained.

Parts 1(b) and (c) of the claim denied.

Part 2 of the claim sustained so far as applicable to Part 1 (a).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.