

**Award No. 3104
Docket No. 3048
2-CRI&P-F&O-'59**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Firemen and Oilers)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreements, the Carrier improperly compensated Stationary Engineer Brooks McElveen for Dec. 25, 1957 while he was on his assigned vacation period from Dec. 9, 1957 to Dec. 27, 1957, both dates inclusive.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe at the time and one-half rate for 8 hours for Dec. 25, 1957.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains and operates a power plant at their 47th St. Shops, Chicago, Ill., on a 24 hour a day, 7 days per week basis, furnishing heat, air, steam and electricity to their shops and car yards.

The carrier maintains 3 assignments of stationary engineers, one on each of the 1st, 2nd and 3rd shifts, and one relief stationary engineer to fill the rest days of the other three.

The day shift, or 1st shift, commences at 7:45 A. M. and works to 3:45 P. M., with work week assignment of Monday through Friday with Sat. and Sunday as rest days.

The second shift commences at 3:45 P. M. and works to 11:45 P. M. with work week assignment of Wednesday through Sunday with Monday and Tuesday as rest days.

The third shift works from 11:45 P. M. to 7:45 A. M. with work week assignment of Friday through Tuesday with Wednesday and Thursday as rest days.

award Claimant McElveen an additional twelve hours pay would make him better off as a result of being on vacation.

As Referee Morse has said in interpreting the Vacation Agreement:

"The parties should never forget the primary purpose of the vacation agreement was to provide vacations to those employes who qualified under the vacation plan set up by the agreement. Any attempt on the part of either the carriers or the labor organizations to gain collateral advantages out of the agreement is in violation of the spirit and intent of the agreement."

It is the carrier's position that the agreement cannot be abrogated by granting Claimant McElveen additional pay for Christmas Day in addition to vacation pay for that date, for time not actually worked.

To support our position in the instant case, we wish to call your Honorable Board's attention to Awards 2212, 2358, and 2800 of the Second Division of the National Railroad Adjustment Board.

In Award 2212, Referee Carter, had the following to say:

"By the Agreement of August 21, 1954, each regularly assigned employe receives eight (8) hours' pay for seven (7) named holidays; including Christmas. In addition to the foregoing, an employe who performs service on a holiday is paid at the time and one-half rate. A holiday is treated as an unassigned day. Award 7136, Third Division . . . Overtime pay may not be included in calculating vacation pay unless it is assigned overtime of the position. This precise question has been exhaustively treated in Award 4498 and 6731, Third Division. We adhere to the reasoning of these awards. They clearly support the conclusion here reached."

Under the applicable rules, the claim for twelve hours additional pay is without merit, has been declined by the carrier, and we respectfully request your Board to sustain our position which is supported by the current agreements.

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.

Parties to said dispute were given due notice of hearing thereon.

The agreed facts in this dispute show that the claimant was on vacation when the holiday occurred and his regular assignment customarily worked on holidays. It follows that "having a regular assignment (he) will be paid while on vacation the daily compensation paid by the carrier for such assignment". See Award No. 2566.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February, 1959.