# Award No. 3477
# Docket No. 3213
# 2-Pull-EW-'60

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

## THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That The Pullman Company violated the agreement dated November 2, 1954, when they failed to compensate Electrician J. Davis eight hours' pay for the holiday, Christmas, Wednesday, December 25, 1957, which was his regularly assigned work day.

2. That accordingly he be compensated in the amount of eight hours' pay at the pro rata hourly rate of his position.

EMPLOYES' STATEMENT OF FACTS: On November 2, 1954, an agreement was signed providing for eight hours' pay at the pro rata hourly rate of pay to the employe in a position when a holiday fell on one of the work days of his position if he was compensated by the company the last work day preceding the holiday and the first work day following the holiday. This holiday pay was retro-active to May 1, 1954.

The company took the position when this agreement was signed that the employes when on vacation were not entitled to the holiday pay. After several conferences they agreed with our position that the employes working in the districts and agencies were entitled to the holiday pay because they were regularly assigned to work on holidays. When on vacation and a holiday occurred during this period it was one of the employe's regular work days he would be entitled to eight hours' vacation pay and eight hours, holiday pay, totaling sixteen hours' pay. Under date of June 2, 1955, Mr. H. R. Lary, Supervisor, Labor Relations of The Pullman Company, sent an interpretation to this effect.

This meant that the employes had holiday pay due them retro-active to May 1, 1954, and under date of July 12, 1955, I addressed a letter to Mr. H. R. Lary asking him when the company intended to compensate the employes for the holiday pay that was due them when they were on their vacation. Under date of October 6, 1955, Mr. Lary replied advising on what pay period the employes would receive the holiday pay due them for the holidays as follows:

In the dispute settled under Second Division Award 2291 (Adolph E. Wenke, Referee) the organization filing claim alleged that certain employes were improperly denied one day's pay for Monday, July 5, 1954, a day celebrated as a holiday which fell within their vacation period of fifteen consecutive workdays. The organization requested that the carrier be ordered to compensate the employes at their applicable rate in the amount of one (1) day's pay. In arguing its case before the Board, the carrier pointed out that the purpose of the paid holiday rule is not to increase the number of days to which an employe is entitled under the vacation agreement, that Section 6 of Article 1 of the August 21, 1954, agreement clearly provides that holidays which fall on what would be a workday of an employe's work week shall be considered a workday of the period for which he is entitled to a vacation and that the paid holiday rule does not increase the number of days to which the employe is entitled. In denying the claim, the Board stated the instant case presented the same question upon which Award 2277 is based and that what was said therein was controlling.

In Second Division Award 2284, (Edward F. Carter), settling a dispute involving the organization's request for additional pay for Decoration Day, the Board penalized the company for failing to consider the holiday a workday of his vacation as a result of which the employe was given 10 days' vacation in addition to the holiday. The Board stated that under these conditions the employe was entitled to the additional day's pay but pointed out that "if the holiday had been counted as one of his vacation days, he would not have a valid claim." In the case at hand, The Pullman Company properly considered the Christmas, 1957 holiday as a workday of Electrician Davis' vacation period and, therefore, he does not have a valid claim.

## CONCLUSION

In this ex parte submission the company has shown that Article I. VACATIONS, of the agreement signed November 2, 1954, supports management's position that when a holiday falls on what would have been a workday of the employe's work week had he not been on vacation, the holiday shall be considered a workday of the employe's work week and shall be used in the determination of the number of days of vacation the employe is entitled to and for which he is entitled to be paid 8 hours per day at his daily rate of pay. Additionally, the company has shown that Articles 9 and 16 of the vacation agreement effective July 1, 1948, between The Pullman Company and its electrical workers support the company in this dispute. Finally the company has shown that awards of the National Railroad Adjustment Board support management's position in this dispute.

The claim that Electrician Davis is entitled to 8 hours' additional pay for December 25, 1957, 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.

At the time involved in this dispute Claimant Davis was an electrician working in the yard in carrier's Cincinnati District. Claimant was assigned to a position that had been filled seven days per week. The work days of claimant's regularly assigned work week were Tuesday through Saturday. Claimant was on vacation from Tuesday, December 24, 1957 through Saturday, December 28, 1957. Christmas Day fell on Wednesday of that vacation period. Claimant was compensated in the amount of eight hours straight time rate of pay for each day of his vacation, including Christmas Day. The claim is that he was entitled to an additional eight hours' pay, or a total of sixteen hours' straight time compensation for that day.

Article I, Section 2 of the parties' fringe benefit agreement adopted on November 2, 1954 provides that when, during an employe's vacation, a contract holiday (such as Christmas) falls or is observed on what would be a work day of the employe's regularly assigned work week, "such day shall be considered as a work day of the period for which the employe is entitled to vacation." Article 9 of the parties' vacation agreement provides in pertinent part that an employe who is in his regular position at the time of his vacation shall be allowed, for each day for which he is entitled to vacation with pay, an amount representing "his daily compensation (eight hours at his straight time hourly rate) in such position."

The foregoing agreement rules are clear, specific and unambiguous as applied to the facts of this case. The plain language of these rules indicates that the carrier was not required to grant Claimant Davis more compensation for Christmas Day, 1957 than the eight hours straight time pay which he received for that day. Said rules expressly provide that a holiday falling on a work day of the employe's regularly assigned work week while he is on vacation shall be considered as a work day for which the employe shall be paid in the amount of eight hours at straight time rate. No other agreement rule can be found which required any additional pay under the subject factual circumstances.

The organization contends, however, that the parties entered into a binding interpretation of Article I, Section 2 of their fringe benefit agreement which fully supports the present claim. The record does indicate that shortly after this agreement was executed on November 2, 1954, the organization protested the carrier's pay practice for holidays occurring during employes' vacations, and that as a result of conversations that were had concerning the interpretation of the subject Article I, Section 2, "it was agreed," according to a letter of October 6, 1955 from carrier's Supervisor, Labor Relations to the Secretary-Treasurer of System Federation No. 122, "that were a yard or shop craft employe is **regularly assigned** to work the holiday which falls on one of the work days of his regularly assigned work week, such employe shall be paid while on vacation eight hours (at the straight time hourly rate) for the holiday and eight hours (at the straight time hourly rate) for the vacation day, or a total of sixteen hours." This letter continued by advising when the affected employes would be granted pay adjustments for previous holidays. It closed with the following statement: "Additionally, this is to advise that the above settlement applies only to craft employes in yards inasmuch as our repair shop employes are not regularly assigned to work on holidays and are not entitled to any additional adjustment."

As a result of the foregoing agreed upon arrangements, all of the affected craft employes in carrier's yards were paid, retroactive to Decoration Day, 1954, a total of sixteen hours straight time pay for each contract holiday falling or observed on a work day of their regularly assigned work week while said em-

ployes were on vacation. The carrier continued this practice until December 25, 1957 — the date involved in the present claim.

Assuming for the sake of this analysis that Claimant Davis would be due the requested additional compensation if the formula set forth in the above letter were applied to Christmas Day, 1957, the question arises as to whether the carrier had become contractually obligated to make this payment. It must be evident that the carrier settled a grievance dispute by adopting an interpretation more advantageous to the employes than was required by the clear language of the contract. Management followed for a total of three and one-half years the more liberal practice arising out of this interpretation.

We are unable to conclude that this settlement agreement and the resulting practice amended the clear meaning of the contract. If the organization's representative had accepted a settlement agreement creating a practice which provided less for the employes than that to which they clearly were entitled under the contract, it could not be successfully argued that the employes thereafter were estopped from insisting upon their contract rights. The carrier is free to grant more than that which it is contractually required to provide, but we cannot hold, under the guise of interpreting the agreement, that it thereby has become obligated to continue doing so.

We are of the opinion and find that the contract language pertinent to this controversy must be applied as it is plainly written, that such language does not require the results contended for in this claim, and that the claim must therefore be denied.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 20th day of June 1960.

## DISSENT OF LABOR MEMBERS TO AWARDS 3477 AND 3518

The majority admits that "it was agreed," according to a letter of October 6, 1955 from carrier's Supervisor, Labor Relations, to the Secretary-Treasurer of System Federation No. 122, "that where a yard or shop craft employe is regularly assigned to work the holiday which falls on one of the work days of his regularly assigned work week, such employe shall be paid while on vacation eight hours (at the straight time hourly rate) for the holiday and eight hours (at the straight time hourly rate) for the vacation day, or a total of sixteen hours," yet states that " * * * we cannot hold * * * that it (the carrier) thereby has become obligated to continue doing so." The majority by so holding ignores the fact that the interpretation of June 2, 1955 is binding until such time as it may be changed by mutual agreement or in accordance with Section 6 of the Railway Labor Act.

**Edward W. Wiesner**

**R. W. Blake**

**Charles E. Goodlin**

**T. E. Losey**

**James B. Zink**