

Award No. 3827
Docket No. 3635
2-NPTCO-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE NORTHERN PACIFIC TERMINAL COMPANY
OF OREGON**

DISPUTE: CLAIM OF EMPLOYEES: 1 — That under the current agreement Carman Orin Chambers was improperly compensated for eight hours service performed by him on January 1, 1959, when the carrier refused to compensate him at his regular assigned rate of pay.

2 — That accordingly the carrier be ordered to compensate Carman Chambers for the difference in his regular assigned rate and the car inspector rate.

EMPLOYEES' STATEMENT OF FACTS: Carman Orin Chambers, hereinafter referred to as the claimant, is employed by The Northern Pacific Terminal Company of Oregon, hereinafter referred to as the carrier, and is assigned to a position as passenger carman, Monday through Friday with rest days of Saturday and Sunday, exclusive of holidays, with the accompanying hourly rate of \$2.548. The car inspector rate is \$2.504. On January 1, 1959, a recognized holiday, claimant worked the eight hours of the second shift as passenger carman as per prior arrangement in conformity with the accepted practice in the distribution of overtime, which includes service performed on holidays. For this service he was properly paid at the passenger carman rate. At the end of this tour of duty, claimant was requested by the supervisor to work another eight hours on the third shift in the place of Car Inspector Wilson who had reported sick. Claimant complied with request of the supervisor and worked the position of car inspector for eight hours of the third shift, for which service he was paid at the car inspector rate. Claimant qualified for and was properly paid at passenger carman rate for eight hours holiday pay under the provisions of Article II of the August 21, 1954 agreement.

The carrier concedes the applicability and has always applied the provisions of Rule 16 to all service performed outside of employes assigned hours of work, except in the instant case involving service performed on the holiday.

POSITION OF EMPLOYEES: It is submitted that within the meaning of Rule 16, which reads:

man's pro rata rate in conformity with said August 21, 1954 agreement. This payment was in addition to the two days at time and one-half for the two shifts he actually worked. Thus claimant was paid the equivalent of 4 straight-time days, 2½ at passenger carman's rate, and 1½ at freight-car inspector's rate.

In correspondence on the property, the carmen have stated that it has been the practice for the carrier to pay an employe his assigned rate, when such was higher than the rate for work actually performed, on holidays. Since Labor Day of 1957, the carrier **has not made such payment**, and denies the carmen's statement. Prior to Labor Day of 1957, almost all of carrier's employes in the mechanical department were scheduled by bulletin to work on all seven holidays, such holidays then being a part of the employes' regular work weeks. Under **those** conditions, the carrier was obligated by bulletin to pay an employe's regular rate, and also because the employe was performing his regular duties; therefore, there was no dispute concerning who was to work which jobs or what rate was to be paid. As documentary evidence of the change in the holiday conditions on the property, a copy of the notice posted on August 22, 1957 is made a part hereof as carrier's exhibit.

CONCLUSION

The carrier has clearly shown that it has fulfilled every obligation required by the provisions of the current agreement and any and all other agreements between the parties in connection with the payment made to the claimant on January 1, 1959, therefore, the agreements have not been violated, and the claim is without merit and should be denied. The carrier respectfully so requests.

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 waived right of appearance at hearing thereon.

The claimant here was assigned to the position of passenger carman at the rate of 2.548. On January 1, 1959 he worked the holiday and was properly compensated. He was then requested to work a second shift due to the fact that a car inspector had reported sick. For this service he was paid the car inspector rate based on \$2.504. The issue is whether under the applicable rule he was entitled to his passenger carman rate.

The plain language of Rule 16 supports his claim. It provides:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

However, Carrier contends that holiday work is on a different footing; that it has no recognized status and is distributed by mutual agreement. From

this it is argued that claimant was not performing work legally assigned — that he was not stepping into a recognized roster slot. They say that the arrangement for the holiday work is unclassified and casual.

Accepting as true the Carriers factual contentions, we nevertheless are unable to give the rule the narrow and technical construction which this position requires. Its purpose was to protect an employe who is ordered to work at a classified level less remunerative than his own. It is no doubt true that a bulletined position covering the holiday was not in existence. Award 2573 of this division is analagous and persuasive in that it upholds a broad rather than a narrow approach to the rule.

We hold therefore that a bulletined position covering a holiday need not exist in order for work to be within the protective scope of Rule 16.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1961.