

Award No. 4182
Docket No. 4072
2-GM&O-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GULF, MOBILE & OHIO RAILROAD COMPANY
(Northern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector C. Rutledge was improperly compensated for July 4, 1960, while on vacation.
2. That accordingly, the Carrier be ordered to additionally compensate said Car Inspector in the amount of eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, operates train yard at Springfield, Illinois twenty-four hours per day, seven days per week.

Carman C. A. Rutledge, hereinafter referred to as the claimant, has an assignment on the second shift with work days Monday through Friday. He was on vacation July 4 through July 22, 1960, both dates inclusive. While on vacation his position was filled every day by the vacation relief inspector, including July 4, 1960. Claimant has regularly filled his position when holidays fall on a work day of same.

Since the advent of the National Agreement dated August 21, 1954, all shop craft employes of this carrier, holding an assignment that is filled on a holiday falling within their work week while they are on vacation have been paid eight hours straight time plus eight hours time and one-half rate of pay. Effective May 30, 1960, the carrier arbitrarily withheld the eight hours at time and one-half rate, and continues to do so.

This dispute has been handled with carrier officials up to and including the highest officer so designated by the company, with the result he has declined to adjust it.

“(D) Service performed on the following legal holidays, namely: New Year’s Day, Washington’s Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half.”

It is obvious from the caption of the rule which is identified as “Overtime—Emergency Service” that holiday service is overtime.

Record is kept of overtime and carrier endeavors to distribute it equally among train yard inspectors as required by Rule 8 which reads in part as follows:

“Record will be kept of overtime worked and employes called with the purpose in view of distributing the overtime equally.”

The claim is progressed under the interpretation dated June 10, 1942, of Article 7(a) of the Vacation Agreement, which provides as follows:

“Article 7(a)

An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.

This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier.” (Emphasis ours.)

As will be shown by the facts in this case and the agreement applicable to overtime work on holidays, such work is casual and unassigned. The claimant is not entitled to holiday pay for July 4, 1960, because service performed on that day by other car inspectors at Ridgely was casual or unassigned overtime. Employes are not entitled to casual or unassigned overtime payments for holiday work while on vacation.

There is nothing in the agreement between the parties in this dispute that supports the employes’ claim, and it 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.

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

Claimant submits that he was improperly compensated for the holiday of July 4, 1960 while he was on vacation, and seeks additional compensation

under Article I, Section 3 of the August 21, 1954 agreement, and Article 7(a) of the Vacation agreement of December 17, 1941 and its interpretation.

It is agreed that claimant's work week was Monday through Friday; that July 4, 1960 was a Monday, and that claimant was paid vacation pay for Monday, July 4, 1960, at eight hours' straight time.

If Monday July 4 was a part of claimant's regular assignment, then he must prevail.

If that day's work was casual and unassigned, then the carrier's position must prevail.

The record before us shows that on June 30, 1960 carrier posted a bulletin at Ridgely reading as follows:

"Ridgely, Ill.

June 30, 1960

"Notice all Employees Loco. & Car Dept.

"Monday July 4, 1960 is Independence Day. Repair track will be closed. Only such Employees as notified will work to carry on the operation of the railroad at Ridgely in Locomotive Dept. & Train Yard.

/s/ G. W. Broughton
G. W. Broughton
General Mechanical Foreman"

To us, this is the controlling factor here. The contentions of carrier that holiday work is casual and unassigned cannot be accepted as a general statement.

The contention of the Organization that the bulletin of June 30, 1960 was posted to support any claim, such as the instant one, which might thereafter arise cannot be subscribed to in the absence of any showing other than the naked allegation in the Organization's rebuttal statement.

Speculation cannot be the basis of an award of this division. The bulletin of June 30 is controlling of the fact, and only the fact, that July 4 work at the Ridgely Train Yard was unassigned work, and as a result the claim must be denied.

As to the objections raised by the carrier concerning the introduction of new matter by the Organization, our award precludes the necessity of ruling at this time.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.