

Award No. 4470

Docket No. 4005

2-IT-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman W. E. Coons was improperly paid for July 4, 1960 (Fourth of July).
2. That accordingly the Carrier be ordered to additionally compensate him for the difference in the Carmen's rate that he was paid and the Foreman's rate of the position that he was filling at that time.

EMPLOYES' STATEMENT OF FACTS: Carman W. E. Coons, hereinafter referred to as the claimant, was regularly assigned as such at Federal Shops, Alton, Illinois. The Illinois Terminal Railroad, hereinafter referred to as the carrier, assigned him to temporarily fill the place of Foreman Clark at the Roxana Shops June 27, 1960 through July 8, 1960. The work days of this assignment were Monday through Friday. July 4th fell on Monday.

The claimant worked this assignment on July 2 and July 5 which were the work days just prior to and following the Fourth of July. He was not allowed any pay for July 4, 1960 (Fourth of July). After handling claim for eight hours straight time at the foreman's rate of pay, carrier declined same, but later allowed the claimant eight hours at the straight time rate for carmen.

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

The agreement effective September 1, 1949, as amended, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that Claimant Coons, while filling this temporary position of Foreman Clark's, was working under the provisions of Rule 34 of the shop crafts agreement, and was entitled to all provisions of the shop crafts agreement. Rule 34 reads as follows:

On June 8, 1961, it was agreed to withdraw the Rex Anderson claim, File 5757, from the Second Division and settle same on the property.

On June 16, 1961, we wrote the general chairman confirming telephone conversation that we would settle the Coons claim on the same basis as the Rex Anderson claim.

Under date of June 19, 1961, general chairman wrote his Grand Lodge requesting that they withdraw the Anderson Case from the Second Division.

Under date of July 3, 1961, the accounting department was authorized to pay the claim of Carman Coons.

Under date of July 10, 1961, voucher was sent to Coons settling his claim for holiday pay July 4, 1960.

Under date of July 7, 1960, general chairman addressed a letter to the carrier advising that the payment of eight (8) hours at the carman's straight time rate for Carman Coons was not the proper payment.

Under date of July 10, 1961, carrier replied to the General Chairman.

It can be readily seen through the above exchange of letters between the carrier and the general chairman, it was never the intention to settle the Coons claim on any other than the basis on which the Rex Anderson claim was settled. Anderson was paid time and one half the foreman's daily rate plus one straight time day at the carman's rate for working on February 22, 1960 (Washington's Birthday). Inasmuch as Coons did not work the holiday, the only contention was whether Coons was entitled to holiday pay at the straight time carman's rate.

On July 20, 1961, I again wrote the General Chairman in regard to the Coons claim, stating my position.

POSITION OF CARRIER: The W. E. Coons' claim has been settled according to agreed terms. Nowhere in the correspondence between the carrier and the general chairman can it be found that the general chairman ever questioned the payment of a straight time day at the carman's rate for paid holiday for the claimant. What actually happened, the general chairman received a copy of Award No. 3763 after he had settled the Rex Anderson claim and, thereafter, took the position that the proper payment to Coons for holiday pay was a straight time day at the foreman's rate.

Although there is not too much involved, moneywise, in this claim, there is a principle. We paid Coons what we agreed to pay him for the holiday. It is our position that the proper payment for a carman temporarily assigned as a foreman is a straight time day at the carman's rate for the holiday.

All data herein submitted in support of the carrier's position has been handled with the employees and made a part of the particular question in dispute.

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 W. E. Coons has been employed as a carman at the Carrier's Federal Shops, Alton, Illinois. From June 27 to July 8, 1960, he was temporarily assigned to fill the position of foreman Clark at the Carrier's Roxana (Illinois) shops. The Claimant did not work on July 4, 1960, a contractually paid holiday, and received eight hours' pay at the straight time carman's rate.

He filed the instant grievance in which he requested the difference between the straight time carman's rate and the higher straight time foreman's rate for said eight hours. It is undisputed that the difference amounts to \$4.73. The Carrier denied the grievance.

In support of his claim, the Claimant relies on Rule 34 of the applicable labor agreement which reads, as far as pertinent, as follows:

"Should an employee be assigned temporarily to fill the place of a foreman, he will be paid his own rate . . . if greater than the foreman's rate; if it is not, he will get the foreman's rate . . ."

The clear and unambiguous language of Rule 34 can leave no doubt whatsoever that the Claimant is entitled to receive the higher foreman's rate for July 4, 1960. See: Award 3763 of the Second Division.

The parties are in disagreement whether the Organization settled the instant claim on the basis of the lower carman's rate during the processing of the grievance on the property. At that time, a grievance was pending before this Division which was filed by the Organization on behalf of Rex Anderson, a carman in the employ of the Carrier. Anderson had worked as a temporarily assigned foreman on Washington's Birthday, 1960, which is also a contractually paid holiday. That claim was settled out-of-court and Anderson was paid time and one-half the foreman's daily rate plus one straight-time daily carman's rate. The Carrier contends that it reached an understanding with the Organization that the instant claim would be settled on the same basis as the Anderson claim. Contrary thereto, the Organization denies such an understanding. The alleged settlement was not incorporated in a specific document but was alluded to in letters exchanged between the Carrier and the Organization. These letters are inconclusive and conflicting. As a result, we are unable to make a finding to the effect that the Organization entered into a binding compromise in which it waived the Claimant's undeniable right to receive the foreman's rate for July 4, 1960.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.