

Award No. 4662

Docket No. 4674

2-SOU-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the provisions of the current agreement, when, on February 22, 1963, (Washington's Birthday) Machinist H. L. Suggs was denied holiday pay amounting to eight (8) straight time hours.
2. That the Carrier be ordered to reimburse Machinist Suggs accordingly.

EMPLOYEES STATEMENT OF FACTS: Machinist H. L. Suggs, hereinafter referred to as the claimant, is regularly employed by the Southern Railway Company, hereinafter referred to as the carrier, at Spencer, North Carolina. The regular assigned work week of the claimant is Tuesday through Saturday. Rest days are Sunday and Monday. The claimant occupies a "swing shift" position, filled as follows:

Tuesday	7:00 am to 3:00 pm
Wednesday	3:00 pm to 11:00 pm
Thursday	3:00 pm to 11:00 pm
Friday	11:00 pm to 7:00 pm
Saturday	11:00 pm to 7:00 pm
Sunday & Monday	Rest days

The Agreement dated August 19, 1960, — Article 3, Holidays, reads as follows:

"Section 1. Subject to the qualifying requirements applicable to regularly assigned employees contained in Section 3 hereof, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which as-

lished in accordance with the requirements of Rule 1(e) of the agreement. On February 19, after observing his two consecutive rest days on February 17 and 18, he worked 7:15 a.m. to 3:15 p.m. On February 20 and 21 he worked from 3:15 p.m. until 11:15 p.m. On February 22 and 23 he worked 11:15 p.m. until 7:15 a.m.

Rule 6(d) and the holiday pay rule (Article II, Section 1, 3, 4 and 5 of the agreement of August 21, 1954 as amended) identify the holidays. The note under Rule 6(d) identifies holiday shifts by providing that a shift ending between 12:01 a.m. on the morning of a holiday and 12:00 midnight the night of the holiday is a holiday shift and that work performed on such shift is to be paid for at the rate of time and one half. In other words, the date on which the shift ends determines whether it is a holiday shift and not the date on which the shift begins. This provision was adopted by a memorandum of understanding dated July 1, 1926, and has been in effect since that time.

Section 5 of the agreement of August 21, 1954 providing that "Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday" preserved this note in applying the paid holiday rule.

The paid holiday rule which became effective May 1, 1954 by virtue of the Chicago Agreement of August 21, 1954 (as amended by the agreement of August 19, 1960) provides that each regularly assigned hourly and daily rated employee shall receive 8 hours pay at the pro rata hourly rate of the position to which assigned for each of the holidays enumerated therein, which are the holidays identified in Rule 6(d), "when such holiday falls on a work day of the work week of the individual employe."

Machinist Suggs was a regularly assigned hourly rated employee. February 22, 1963, was one of the holidays enumerated in the rule. It was "Washington's Birthday." However, under the note under Rule 6(d) that day did not fall on a work day of the work week of Machinist Suggs. He did not work a shift that ended that day. He therefore did not qualify for pay at the time and one-half rate or for holiday pay that day, and has no contract right to the compensation here demanded by the Association on his behalf. He met all the other requirements. Compensation paid him by the carrier was credited to the work days immediately preceding and following the holiday and presumably he was available for service that day had his services been needed. The simple fact remains, however, that the holiday did not fall on a work day of the work week of Machinist Suggs, and he did not qualify for holiday pay.

Claim being unsupported by the agreement, the board has no alternative but to make a denial award.

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.

Rule 6(d) of the Agreement provides that "work performed" on certain

named holidays, including Washington's Birthday, shall be paid for at the rate of time and one-half. A Note adopted "for the purpose of determining proper rate for work performed on holidays under the above rule", provides that any shift ending between 12:01 a.m. and 12:00 midnight on the holiday "is a holiday shift", and that work performed on it bears the time and one-half rate; "i.e., the quitting time governs rather than the starting time." Its purpose presumably was to eliminate duplication for an employee whose shift regularly ends on the morning of the holiday and resumes before midnight of that day.

Claimant is a regularly assigned employee whose work week is from Tuesday through Saturday. In 1963 Washington's Birthday, February 22nd, fell on Friday, and Claimant performed work on that day as well as the days preceding and following. However, he was on a swing shift. On Thursday, the 21st, he worked from 3:00 to 11:00 p.m.; and, on his next shift, from 11:00 p.m. on Friday, the 22nd, to 7:00 a.m. next day. Thus, while he worked on Washington's Birthday, he was not entitled to extra pay under Rule 6(d) and the Note thereto, since he worked no shift ending on that day. Both the Rule and the Note were adopted long prior to 1954.

On the same ground Carrier denied him holiday pay under Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, which provides holiday pay for each regularly assigned employee for the same holidays, including Washington's Birthday, "when such holiday falls on a workday of the workweek of the individual employee." Since Claimant's workweek was Tuesday through Saturday, it is apparent that Friday, February 22nd, fell on a workday of his workweek, even though his shift that day started instead of ending on the holiday.

The Carrier's reason for this denial of holiday pay under the August 21, 1954, Agreement as amended, is based on Article II, Section 5 thereof, which provides as follows:

"Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employee."

But that provision means only that rules like 6(d), and practices thereunder, as shown by the Note cited, shall continue to govern pay for the holiday work done. It does not provide that such rules and practices shall govern the allowance of holiday pay under the 1954 and 1960 Agreements, and we find no provision in either of them limiting the employee's right to holiday pay "when such holiday falls on a workday" of his workweek, and he qualifies for it by work on the immediately preceding and following work days. The claim must be sustained.

AWARD. Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.

DISSENT OF CARRIER MEMBERS TO AWARD 4662

We believe that the majority has reached an unwarranted conclusion in the instant dispute by misinterpreting the rules of the controlling agreement. Believing this award is erroneous and contrary to the rules and evidence of record, we dissent.

P. R. Humphreys

H. F. M. Braidwood

F. P. Butler

H. K. Hagerman

W. B. Jones