

Award No. 4695
Docket No. 4487
2-NYNH&H-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That the New York, New Haven & Hartford Railroad Company improperly compensated John F. O'Sullivan, Car Inspector, Derby, Conn., for each of his weeks of vacation period, August 5 and 12, 1961.

2—That accordingly the New York, New Haven & Hartford Railroad Company be ordered to additionally compensate Car Inspector John F. O'Sullivan in the amount of eight (8) hours at the time and one-half rate, for each week of his vacation period.

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven & Hartford Railroad Company, hereinafter referred to as the carrier, maintained a "One Man" facility at Derby, Conn., under the immediate supervision of Foreman R. W. Reed, where John F. O'Sullivan hereinafter referred to as the claimant, was employed by the carrier as a car inspector, with the following regularly assigned days and hours:

Monday	9:00 A. M. to 2:00 P. M. — 4:00 P. M. to 7:00 P. M.
Tuesday	9:00 A. M. to 2:00 P. M. — 4:00 P. M. to 7:00 P. M.
Wednesday	9:00 A. M. to 2:00 P. M. — 4:00 P. M. to 7:00 P. M.
Thursday	9:00 A. M. to 2:00 P. M. — 4:00 P. M. to 7:00 P. M.
Friday	9:00 A. M. to 2:00 P. M. — 4:00 P. M. to 7:00 P. M.
Saturday	7:00 A. M. to 3:00 P. M.

For the year 1961 the claimant was assigned a vacation period of the weeks of August 5 and 12, 1961. For this vacation period he was compensated forty (40) hours for each week.

An oral protest was entered, with the Master Mechanic, Mr. D. F. Prendergast, by the local committee, requesting that he be properly paid the pay of his regular assignment, while on vacation, an additional eight (8) hours at the time and one-half rate. The master mechanic concurred with this re-

August 10. He was not entitled to any vacation allowance on Saturday, August 12, and was improperly allowed one day's vacation Friday, August 11.

All of the facts and arguments herein are available, or have been affirmatively presented, to employees.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There is no dispute between the parties about the facts in the instant case. The Claimant is an hourly rated car inspector who in 1961 was entitled to a vacation of ten working days with pay. The Claimant contends that since his work station was a one man operation and he has regularly been required to work his Saturday rest day he is entitled to an additional sixteen hours at penalty rates for Saturdays which intervened during his vacation period.

In support of the claim the Organization points to Second Division Award No. 4507 that under Section 7 (a) of the vacation agreement of December 17, 1941, and its agreed to interpretation of June 10, 1942 the claim should be sustained.

The agreed to interpretation of Article 7 (a) of the Vacation Agreement reads in pertinent part as follows:

"This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by this carrier than if he had remained at work on such assignment * * * *."

The case at bar therefore turns on the answer to the question, are the relief days worked to be considered as part of the **regular assignment** of the claimant?

The Organization argues that since claimant was employed at a one man work station where he was routinely required to work on Saturdays this was a part of his regular assignment. If he had been working during his vacation he would have routinely worked on Saturdays and therefore applying the above quoted interpretation he should not be any better or worse off, while on vacation as to daily compensation, than if he had remained at work on such assignment.

At first blush this seems to be a tenable argument. The Carrier answers that Saturday work was not part of Claimant's regular assignment and supports its argument by stating, without contradiction by the Organization, that the Saturday work could be discontinued without valid objection by the Organization. Further the Organization has not countered by argument or evidence that the bulletin under which this job is worked regularly assigns Satur-

day work to the Claimant. In final support of its position the Carrier cites a long line of adjudicated cases of which Second Division Award No. 1593 holds, on the point in question, as follows:

“ * * * * the vacation period and the payment made during the time thereof is determined by the employe's bulletined assignment and not by exigencies that may arise during its duration.” (Emphasis ours.) To the same effect see Awards 3996, 4003, 4032, 4090, and 4238, Third Division.

This Board concurs with the authorities cited supra.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.