



Award No. 5028

Docket No. 4927

2-GN-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the current agreeemnt the Carrier improperly compensated Carman Stanley Morgan at straight time rate for service performed on his rest days February 17 and 18, 1964.

2 — That accordingly the Carrier be ordered to additionally compensate the claimant in the amount of four (4) hours pay at the applicable hourly rate for each date shown above.

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.

This is a companion case of Award 5027 where we found that it was not improper for Carrier to designate Carman Morgan, the Claimant herein, to fill a vacation vacancy on February 17 and 18, 1964. The present claim concerns quite a different question, namely, whether Claimant should have received time and one-half rather than straight-time for filling the vacancy on those two days since they were the rest days of his regularly assigned position.

Carrier insists that Claimant was entitled to straight-time only since he assumed all conditions of the position he occupied. We disagree because of the specific circumstances of the present case.

The vacation vacancy was filled on a temporary short-term basis. Claimant worked in that position on February 17, 18, 19, 20 and 21, a total of five

days, then returned to his regularly assigned position for work on February 22 and 23 and rest days on February 24 and 25. On February 26, 27 and 28, he again filled the vacancy.

The parties' intent that employees are to be compensated at the time and one-half rate for services performed on rest days is plainly expressed by Rule 16 of the Agreement and we will not hold that an employee is deprived of those benefits in the factual situation in question where Claimant was switched back and forth between his regular position and a temporary one during a two weeks period and, as a result, not only lost two of his regular rest days but also received no rest day of the temporary assignment. We find no agreement that expressly or by reasonable interpretation requires a contrary conclusion.

We do not repudiate the principle that an employee who accepts an assignment must assume all of its employment conditions. It simply is our holding that that principle is not applicable to the specific circumstances of the present case.

The claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.