

Award No. 5262**Docket No. 5158****2-SLSF-EW'67****NATIONAL RAILROAD ADJUSTMENT BOARD****SECOND DIVISION**

The Second Division consisted of regular members and in addition Referee William Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the St. Louis-San Francisco Railway Co. violated the Current agreement when it failed to properly compensate Electrician Lester Stratton for service performed on his Washington's Birthday, February 22, 1965.

2. That accordingly, the St. Louis-San Francisco Railway Co. be ordered to additionally compensate Electrician Lester Stratton in the amount of eight (8) hours' pay at the rate of time and one-half for service performed from 12 A. M. to 8 P. M. on his and Washington's Birthday, February 22, 1965.

EMPLOYES' STATEMENT OF FACTS: Part 2 of the claim of Employees set forth above exactly as contained in the Notice of Intent letter filed with the Board under date of April 27, 1966, contains a typographical error. It should read as follows:

"(2) That accordingly, the St. Louis-San Francisco Railway Co. be ordered to additionally compensate Electrician Lester Stratton in the amount of eight (8) hours' pay at the rate of time and one-half for service performed from 12 A. M. to 8 A. M. on his and Washington's Birthday, February 22, 1965."

and we respectfully request that all concerned make the necessary correction.

Electrician Lester Stratton, hereinafter referred to as the claimant, is regularly employed by the St. Louis-San Francisco Railway Co., hereinafter referred to as the Carrier, and regularly assigned at Springfield, Mo., on the third shift, with assigned hours of 12 A. M. to 8 A. M., with Saturday and Sunday as rest days. Claimant was assigned by the Carrier to work the third shift from 12 A. M. to 8 A. M. on a legal holiday, Washington's Birthday, Monday, February 22, 1965, on which date the claimant's birthday also occurred. Claimant was compensated for February 22, 1965, as follows:

by the current holiday pay provisions reproduced as Carrier's Exhibit "A", but the practice, as borne out by the testimony entered in the record before Emergency Board No. 66, of compensating an employe for one day's pay for a day's work on formerly a Sunday and later an assigned rest day which also happened to fall on a recognized holiday has continued uninterrupted. This is also borne out in the Employees' proposal of May 31, 1963 (Carrier's Exhibit "E") proposing a change in the holiday provisions of Article II of the August 21, 1954 Agreement, as amended by the Agreement of August 19, 1960. Section 5 of the Employees' said proposal reads as follows:

"Section 5. Nothing in this Article shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday." (Emphasis ours.)

From January 1, 1945 up to and including August 31, 1949, the practice under the holiday work rule was to allow a single payment at time and one-half rate for work on a holiday which also happened to be a Sunday; and from September 1, 1949 to the present dispute the practice of allowing one payment at time and one-half rate for work performed on a holiday which also happened to be an assigned rest day was never questioned. The principle is the same and there is no reason why the existing rules and practices thereunder should apply differently to work on one of the recognized holidays which also happens to be the employe's birthday. The fact of the matter is that Section 6 (g) of Carrier's Exhibit "A" specifically provides that existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday.

Moreover, under Section 6 (f) of Carrier's Exhibit "A", if an employe's birthday falls on one of the seven recognized holidays, as in this instance, the employe has the option under the rule of selecting a certain other day to be considered as his birthday for the purpose of Section 6. This provision further evidences the intent of the parties not to disturb the existing rules and practices thereunder governing the single payment at time and one-half rate for work performed on recognized holidays.

In Third Division Award 14240 involving claim for duplicate payment for the single-day service rendered, there are apt quotations from Third Division Awards 2436 (Carter), 12367 (Seff) and 13991 (Dolnick) concerning the proposition that the conduct of the parties to a contract is often just as expressive of intention as the written words, and what was said in those awards is equally appropriate here.

In conclusion, the Carrier respectfully submits that there is no reason here for this Division to depart from the conclusions reached in Third Division Award 14240, and this Division is requested to so find.

All data used in support of the Carrier's position have been made available to the claimant or his duly authorized representative and made a part of the particular question in dispute.

Oral hearing is not desired unless requested by the Employees.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all 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.

Claimant was required to work eight hours on Washington's Birthday, which was not only a holiday but also his birthday. He received eight hours pay for the Holiday, as well as a like amount for his birthday and eight hours pay at the time and one-half rate for working on that day.

Petitioner contends that Claimant is entitled to another payment at the time and one-half rate since he performed work on both his birthday and the Holiday. We disagree. The parties plainly anticipated this specific situation in Article II Section 6 (f) of their February 4, 1965, Agreement, which provides that "If an employe's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purposes of this Section."

Claimant did not exercise his option to celebrate his birthday on a date other than Washington's Birthday and there is no sound basis here for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and the many other awards cited therein that have passed upon precisely the same issue and rules as are now before us, the present claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.