



Award No. 5321
Docket No. 5056
2-L&N-CM-'67

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. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the use of a Carman regularly assigned to the Repair Tracks to fill a birthday-holiday assignment in the Train Yard at Decoursey, Kentucky on January 13, 1965, was in violation of the controlling Agreement, and

2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to additionally compensate Carman H. N. Crouch, who was entitled to work from the Car Inspectors' Holiday Board on that date, for 8 hours at punitive rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On Wednesday, January 13, 1965 Car Inspector L. E. Reeves, who is regularly assigned Tuesday through Saturday on the first shift in the "Bowl" Yard at Decoursey, Kentucky, was absent from work due to that date being his birthday-holiday. As a result of his absence, Carman W. F. Eilerman was required by Local Officials to leave his regular first shift assignment in the Car Shop (Repair Tracks) and fill Mr. Reeves' position on the holiday. However, Mr. Eilerman was not assigned to and/or entitled to work from the Train Yard Holiday Board on that date. Consequently, a time claim for 8 hours at punitive rate of pay was filed in behalf of Carman H. N. Crouch, who was the first available man on the Train Yard Holiday Board.

The Louisville and Nashville Railroad, hereinafter referred to as the Carrier, maintains a sizeable force of Car Inspectors in the Train Yard at Decoursey, 24 hours a day, 7 days per week. In addition, a considerable number of Car Repairers are assigned to a three shift operation in the Car Shop, 7 days per week.

As a result of a permanent Court injunction in 1945 against both the Carrier and the Organizations comprising System Federation No. 91, separate Holiday Boards were established for Car Inspectors and Car Repairers at

a matter of taking care of our business requirements, utilizing the services of our carmen where they were needed.

Mr. Crouch has been properly compensated and no one else is due additional compensation. The claim as made is entirely lacking in merit or agreement support and should be denied.

All matters referred to herein have been presented, in substance, by the carrier to the representatives of the employes either in conference or correspondence.

(Exhibits not reproduced.)

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.

The claim is that Claimant, car inspector Crouch, who was first out on the train yard holiday overtime board, was entitled to work the position of car inspector Reeves, who was absent on his birthday holiday, in preference to Eilerman, a repair track carman. By a special agreement on this railroad separate holiday overtime boards are maintained for train yard employes and for repair track (shop) employes. The Employes contend that Claimant was entitled to the work under Article II, Section 6(g) of the November 21, 1964 Agreement, which provides as follows:

“(g) 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.” (Emphasis ours.)

But the Claimant was not the employe whose birthday holiday was involved, and therefore Section 6(g) does not apply to him. We must therefore look to other provisions to determine his preferential rights, if any.

It would seem that under the special rules on this Carrier's lines, Claimant, as the first man out on the train yard holiday overtime board, was probably entitled to this work if it constituted overtime.

On this question of overtime the Carrier points out in its rebuttal:

“Employes now feel that because Car Inspector L. E. Reeves had a birthday on January 13, 1965, the carrier had an obligation to call Carman H. N. Crouch, who was first out on the applicable overtime board, to work in the train yard. The birthday of Mr. Reeves was a holiday for him only. It is somewhat different from the other holidays set out in Rule 6(b) of the current agreement, as they are holidays for all employes covered by that agreement.* * *

In the employes' submission on Page 2, they state that Carman Eilerman was not assigned to the train yard Holiday board and for that reason was not entitled to work from the Holiday board. This statement is certainly highly irrelevant, as no overtime or Holiday overtime work was necessary and for that reason the question of whether or not Carman Eilerman was eligible for a call from the board has absolutely no bearing on the case. The only employe who was entitled to penalty pay for working his regular assignment on Wednesday, January 13, 1965 would have been Carman Reeves, and he only, as this day was a holiday for Carman Reeves by virtue of the day being his birthday."

The holiday work on Reeves' birthday holiday would have been overtime for him, since it was his birthday, but it was not holiday overtime work for carman Eilerman, and would not have been holiday overtime work for Claimant Crouch. Therefore Claimant was not entitled to the work by virtue of being first out on the trainyard holiday overtime board, and the claim must 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 26th day of October, 1967.