Award No. 5332
Docket No. 5099
2-SLSF-MA-'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. 22, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement rules, Ralph Williams, Machinist at Oklahoma City has been improperly denied additional compensation in the amount of twelve (12) hours at pro rata rate of pay for Saturday, March 13, 1965.

2. That the carrier be ordered to additionally compensate the aforesaid claimant in the amount of twelve (12) hours at the pro rata rate of pay for March 13, 1965.

EMPLOYES' STATEMENT OF FACTS: Ralph Williams, hereinafter referred to as the Claimant, holds seniority as a Machinist and is employed as such by the St. Louis-San Francisco Railway Co., hereinafter referred to as the Carrier, at Oklahoma City, Oklahoma.

The Claimant was called in to work on Saturday, March 13, 1965 which was one of his assigned rest days. The Claimant was paid 8 hours' pay at time and one half rate for working on his rest day. (See Exhibit A attached.)

In addition to the foregoing, March 13 is the Claimant's birthday. The Claimant claimed and was denied 8 hours' pay at the overtime rate for working on his birthday.

This dispute has been handled in accordance with the Agreement with all carrier officers authorized to handle such disputes with the result that all of them declined to adjust it.

The Agreement effective January 1, 1945 as subsequently amended, including the Agreement of February 4, 1965 are controlling.

"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. After the adoption of the forty-hour work week effective September 1, 1949, the practice of allowing only one payment at time and one-half rate for work performed on a holiday which also happened to be an assigned rest day continued uninterrupted and unchallenged until Third Division Award No. 10541 became generally known. That award was rendered April 25, 1962. On the basis of the parties' conduct spanning a period of more than 15 years, it is unreasonable to assume that the Employes would have permitted the practice to remain unchallenged for such a period of time unless they had considered such payment represented a proper application of the Agreement rules.

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.

Finally, 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.

(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 waived right of appearance at hearing thereon.

Claimant performed a day's work on Saturday, March 13, 1965, which was his birthday as well as one of his rest days. For that work he received twenty hours' pay, of which eight hours reflect birthday-holiday pay and the remainder time and one-half for the eight hours worked on a rest day. The question is whether or not Claimant is entitled to an additional payment of eight hours at the time and one-half rate since the aforementioned work was performed not only on his rest day but on his birthday-holiday as well.

We are not unimpressed by the points that have been vigorously advanced by Carrier in support of its contention that an employe is not entitled to duplicate premium pay for the same work merely because it was performed on a day that was his birthday-holiday as well as his rest day. The difficulty

with Carrier's position, as we pointed out in Award 5217 is that the question has been resolved in the organization's favor by a considerable number of awards by a variety of referees (see e.g., Third Division Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 15000, 15052, 15144, 15226, 15340, 15398, 15440 and 15450).

This Referee is very much in favor of applying the principle of stare decisis when a substantial number of awards by a number of different referees have resolved the problem. By adhering strictly and evenly to that principle, there is much to be gained in stability, economy and avoidance of multiple claims, and both carriers and organizations are in a position to rely on a question as settled in applying the rules and disposing of grievances. There are quite a number of principles that have been accepted over the years because of a reasonably consistent line of awards that could well be resolved the other way if they were being encountered for the first time and if the stare decisis concept were not accepted.

We recognize that there have been several recent awards that have not accepted the view of the great majority of awards on the instant question (see Award 5237 and those therein cited). It is not our conclusion that that minority is necessarily in error as to the merits of the dispute. Our holding is that, irrespective of the arguments now raised with respect to the interpretation of the rules in question, the claim must be sustained on the basis of the stare decisis principle which is applicable to, and of compelling force in, the present case.

Carrier's general statement as to past practice is not persuasive since it is unsupported by evidence of specific instances where work was performed on both a holiday and rest day.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1967.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.