



Award No. 5394
Docket No. 5215
2-NYNH&H-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when it denied claim for eight (8) hours pay at time and one-half rate of pay each in favor of Electricians L. O. Smith and V. J. Clements for work performed on a Holiday, Friday, December 25, 1964.

2. That the Carrier be ordered to additionally compensate Electricians L. A. Smith and V. J. Clements each in the amount of eight (8) hours' pay at time and one-half rate for work performed on a Holiday, Friday, December 25, 1964.

EMPLOYEES' STATEMENT OF FACTS: Electricians L. O. Smith and V. J. Clements, hereinafter, referred to as the Claimants, are regularly employed by the New York, New Haven and Hartford Railroad Company, hereinafter, referred to as the Carrier, at the Dover Street Engine House, Boston, Massachusetts. Claimant L. O. Smith held a regular assignment on the 4:00 P. M. to 12:00 Midnight shift, with rest days Friday and Saturday. Claimant V. J. Clements assignment was 8:00 A. M. to 4:00 P. M., with Thursday and Friday as rest days.

Friday, December 25, 1964, Christmas Day, was the claimants' rest days and the claimants were directed to perform the duties of their regular assignments on that day. A claim was made in the amount of eight (8) hours at time and one-half rate each, in favor of claimants for working on their rest days as provided under Rule 4 of the Agreement. Claim was also made for eight (8) hours at time and one-half rate for working on their holiday as provided under Rule 3 of the Agreement.

The Carrier paid the claim for work performed by claimants on their rest day and declined the claim for work on their holiday.

The above stated facts are verified by copy of letter dated October 1, 1965 addressed to General Chairman A. J. DeRitis, Jr., by Director of Labor Relations and Personnel J. J. Duffy, attached hereto as Exhibit A.

Rule 4, Paragraph 4, of our Agreement reads as follows:

"Employee called or required to report for service and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to render only such service as called for or other emergency service which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movements."

The testimony of the Employee Representatives before the various Emergency Board, as indicated above, and the subsequent agreements between the carriers and organizations clearly indicate that there was no intention to pyramid one penalty upon another simply because an employee may perform service on a rest day which incidentally happened to be a holiday.

There has been no difference of opinion between the parties on this property as to the application of these rules for a period of twelve years. Only one penalty payment has been made over the years for any service performed on a rest day which was also a holiday, and no claims have been made for anything more until now.

While the Employees have not so stated, we believe that they have been prompted to enter such claims because of sustaining Awards in similar circumstances involving another organization and different rules, and probably are acting under the theory that they have nothing to lose.

But a later Award of Third Division, Award No. 14220 (Referee B. E. Perelson), points out the distinction between the rules of the agreement involved in those sustaining awards and rendered a denial award in the case at hand.

We subscribe to that principle and impress upon your honorable Board that the agreement rules with System Federation No. 17 on this Property likewise differ from the rules upon which the decision in Award 10541 was predicated.

For all of the reasons heren stated we respectfully request that the claims be denied.

All of the facts and evidence herein have been affirmatively presented to or are known by the Employees.

Oral hearing is not requested.

(Exhibits are 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 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.

The parties hereto have stipulated and agreed that this claim shall be disposed of by the Findings as contained in Award No. 5393 for the reason that this dispute involves the same issue. This claim is sustained pursuant to the Findings rendered in Award No. 5393. To the extent that the Findings in Award 5393 are relevant and material, said Findings are be reference incorporated and made a part hereof.

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 April 1968.