

 Award No. 5395

Docket No. 5216

2-NYNH&H-'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 EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**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 the time and one-half rate of pay in favor of Car Inspector Donald Dinan for work performed on a holiday, Monday, February 22, 1965.

2. That the Carrier be ordered to additionally compensate Car Inspector Donald Dinan in the amount of eight (8) hours' pay at time and one-half rate for work performed on a holiday, Monday, February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Donald Dinan, hereinafter referred to as the claimant, is regularly employed by the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the Carrier, in its New Haven Passenger Car Yard and Railroad Station, with a regular assignment on the 8:00 A. M. to 4:00 P. M. shift, with rest days Monday and Tuesday.

Monday, February 22, 1965, Washington's Birthday was the claimant's rest day and claimant was called from the Overtime Board to work at the Railroad Station. A claim was made in the amount of eight (8) hours at time and one-half rate, in favor of claimant for working on his rest day 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 a holiday as provided under Rule 3 of the Agreement.

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

The above stated facts are verified by copy of letter dated September 30, 1965 addressed to General Chairman H. J. Galligan by Director of Labor Relations and Personnel J. J. Duffy, attached hereto as Exhibit A.

volved 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 the Carmen on this Property likewise differ from the rules upon which the decision in Award 10541 was predicated.

We respectfully submit that the Employees did not bargain for dual penalties for holiday-rest day service. The Carrier has met its obligation when it allowed claimant eight hours' pay at time and one-half and, therefore, the claim for additional payment should be denied.

All of the facts and arguments contained herein have been affirmatively presented to the Employees.

Carrier does not request an oral hearing. However, in the event the Employees request hearing, Carrier also desires the opportunity to be heard.

(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 question involved in this dispute calls for a determination of the measure of payment due an employee, who performs service on his assigned rest day, which is also a designated holiday under Rule 3 of the Agreement. In this instance, Claimant, a regularly assigned employee, was called from the Overtime Board to work at the Railroad Station on Monday, Feb. 22, Washington's Birthday. This day was also Claimant's rest day. Claimant was paid at the time and one half rate for working on his rest day in accordance with Rule 4 of the Agreement. Carrier denied the claim for holiday pay under Rule 3 of the Agreement.

The pertinent part of Rule 3 is as follows:

"Work performed on the following legal holidays, viz: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half.

Service rendered by regular employees on their assigned rest days shall be paid for at time and one-half under Rule 4, Paragraph (4)."

The pertinent part of Rule 4 is Paragraph (4), is:

"(4) Employees 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."

It is the Board's opinion that the above cited Rules 3 and 4 of the Agreement, being separate, independent rules, provide for payment as claimed in this dispute. Lending persuasive support to the validity of this claim is the fact that on June 14, 1966 Carrier served Employees with the following counter-proposal in response to Employee's Sec. 6 notice served upon Carrier May 17, 1966:

"PROHIBITION AGAINST MULTIPLE TIME AND ONE HALF PAYMENTS ON HOLIDAYS

Under no circumstances will an employe be allowed more than one time and one-half payment for service performed by him on any day which is a holiday.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained."

The above cited counter-proposal serves as an admission by Carrier that it recognized the measure of payment as claimed.

We are unable to distinguish this case from an overwhelming line of cases decided in Third Division, commencing with sustaining Award 10541. Therefore, this 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 4th day of April 1968.