

Award No. 5402

Docket No. 5273

2-C&O-SM-'68

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Sheet Metal Worker H. I. Truesdell was improperly denied pay in the amount of eight hours at time and one-half rate for October 29, 1965, which was his birthday holiday and also his rest day.

2. That accordingly the Carrier be ordered to additionally compensate employe in the amount of eight hours pay at the time and one-half rate for service rendered on October 29, 1965.

EMPLOYEES' STATEMENT OF FACTS: H. I. Truesdell, hereinafter referred to as the claimant, is regularly employed as a Sheet Metal Worker by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier on the 7 A.M. to 3 P.M. shift Sunday through Thursday at the Stevens Shop, Silver Grove, Kentucky with Friday and Saturday rest days.

Friday, October 29, 1965 was claimant's birthday-holiday as designated by the February 4, 1965 Agreement and also one of claimant's regularly assigned rest days.

Claimant was required, by the carrier to perform service on October 29, 1965, for which he was compensated for eight (8) hours at the time and one-half rate for service performed on his rest day and eight (8) hours at the pro rata rate for his birthday-holiday. (See letter dated February 2, 1966 submitted as Exhibit A and letter dated November 30, 1965 submitted as Exhibit B.)

Claim was made for an additional eight (8) hours at the time and one-half rate account of service being required of claimant, by the carrier, on his birthday-holiday, October 29, 1965. (See letter dated January 18, 1966 submitted as Exhibit C.)

parties. When this condition exists, there is no reason why continuity should take precedence over error.

What may be a palably erroneous decision is a matter of conjecture. This Board, on this property, is of the opinion that Award 10541 and those Awards which followed it, did not adequately consider, and discuss the subject and in that respect reached erroneous conclusions." (Emphasis ours.)

For more than 40 years the Employees have shown that their intent with respect to the applicable rules coincides with that of the Carrier. They cannot now at this late date change their position for the sole purpose of securing a windfall for an employe who, by fortuitous circumstances, was called to work on a rest day which was also his birthday. The doctrine of Award No. 6 of Special Board of Adjustment No. 564 should be adopted here.

The claim is without merit and it should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

(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 worked his assigned rest day which also was his Birthday-Holiday on February 4, 1965. The claim is for an additional eight hours pay at the time and one-half rate for performing service on the Birthday-Holiday which coincidentally was his rest day.

The fundamental issue involved in this claim is the same as that which was considered by this Division in Award No. 5401. Therefore, we find the Findings in Award 5401 controlling in the instant dispute. Accordingly, the claim will be sustained.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1968.

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