

Award No. 5617

Docket No. 5468

2-N&W-CM-'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. 57, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the current agreement when it failed to properly compensate Carman W. A. Tripp for his service performed on his birthday, February 12, 1966, which was also his rest day.

2. That accordingly, the Norfolk and Western Railway Company be ordered to additionally compensate Carman W. A. Tripp in the amount of eight hours at time and one-half rate of pay for working his birthday, Saturday, February 12, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carman W. A. Tripp, hereinafter referred to as the claimant, is regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the Carrier, and regularly assigned at Muncie, Indiana, on the first shift, with assigned hours of 7:00 A. M. to 3:30 P. M. with a half hour for lunch, and rest days of Saturday and Sunday. The claimant was assigned by the Carrier to work the first shift from 7:00 A. M. to 3:30 P. M. on his birthday, Saturday, February 12, 1966, which was also the claimant's rest day. Claimant was compensated for February 12, 1966, as follows:

Eight (8) hours at time and one-half for working his rest day February 12, 1966 and was compensated eight (8) hours at pro rata rate, being his birthday, in accordance with Rule 5 of the controlling agreement.

Claim was filed with the proper officer of the Carrier under date of February 23, 1966, contending that claimant was entitled to additional compensation of eight (8) hours at punitive rate of pay for service performed on his birthday holiday, under terms of Article II of the November 21, 1964 agreement, and subsequently handled up to and including the highest officer

Throughout all of their testimony in each and every one of these Board hearings, the Employees have stated that they were not asking for anything more than to permit their people "to live as other men" and that they should have holidays off without loss of pay. They have emphasized that their requests were not designed as wage increase requests, and they have agreed that there should not be any pyramiding of one overtime payment upon another.

In addition to all of the Emergency Board proceedings mentioned above as to holidays, the question of overtime payments was dealt with in the Forty Hour Week case, heard by Emergency Board No. 66. Agreement of March 19, 1949, which was patterned upon the Recommendations of that Emergency Board, stated in Article II, Section 3(a):

"There shall be no overtime on overtime; . . ."

Thus we find that in all previous proceedings the impartial Boards have always followed and recommended the principle that there should be no pyramiding of one penalty upon another. In his testimony before Emergency Board No. 130, as quoted above, Mr. Leighty admitted that there was no double penalty involved for work on a rest day which also happened to be a holiday.

For reasons set forth herein, there is no basis for this claim, and it should, therefore, be denied.

All matters herein referred to in support of the Carrier's position are available to or have been the subject of correspondence or discussion in conference between the representative of the parties hereto.

The contention of the committee should be dismissed and the claim denied.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, find 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.

The fundamental issue in this case is the same as that considered in Awards 5331, 5332 and 5405 among others, which arose out of like disputes under corresponding provisions of similar agreements. Accordingly, we must conclude that the question of compensation for work on a holiday which is coincidentally a rest day, has been thoroughly considered with the same determination in all but a handful of cases which have been cited herein by the Carrier. The record here does not convince us that the great majority of awards are in error or that the majority view should not be applicable in the present case. Hence, 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 19th day of December, 1968.