

Award No. 5670

Docket No. 5482

2-C&EI-FO-'69

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. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement is being violated at Salem, Illinois when Laborer James Garner is required to work holidays for straight time pay.

2. That James Garner, laborer at Salem, Illinois be paid time and one-half at current rate of pay in addition to compensation he has already received for Washington's Birthday, February 22, 1966 and each holiday thereafter that he is required to perform services as a continuing claim on each such holiday.

EMPLOYEES' STATEMENT OF FACTS: Laborer James Garner, herein-after referred to as the claimant, is regularly employed as such by the Chicago, and Eastern Illinois Railroad Company, hereinafter referred to as the Carrier at Salem, Illinois. Claimant is regularly assigned to a monthly rated position working six (6) days per week, Monday through Saturday, 1:00 A. M. to 10:00 A. M., with one hour for lunch, and with Sunday as an assigned rest day, for which he is currently (1966) compensated a monthly rate of \$532.29. Claimant is required as a part of his assignment to work all holidays.

Prior to May 17, 1962, Claimant's assignment was an hourly rated position. Effective May 17, 1962 Carrier discontinued the hourly rated position and established through bulletin a monthly rated position to which Claimant was assigned. Copy of the bulletin is attached hereto as Exhibit A. The rate of pay set forth in the bulletin was increased in June 1962 pursuant to terms of National Agreement dated June 5, 1962. It was also increased again in January of 1964, 1965 and 1966 pursuant to terms of National Agreement dated November 21, 1964.

The current (February 1966) hourly rate of pay for laborers at Salem, Illinois, is \$2.54 per hour, and is what the claimant would be paid if the position he now holds was compensated on the hourly rate instead of the monthly rate.

CARRIER'S POSITION: The Carrier's position is now the same as it was during the handling of this matter on the property, i.e. the appeal from the decision of the superintendent mechanical department should have been directed to Carrier's assistant director of personnel, Mr. D. E. Lyons, who is the highest officer designated by the Carrier to whom appeals involving claims and grievances may be directed. The right of the Carrier to designate the officers to whom appeals are to be directed is beyond question. In this regard, the Board's attention is respectfully directed to Third Division Award No. 14503, specifically that part thereof reading as follows:

"We take this occasion to emphasize that Carrier has the absolute right to designate its representative with whom claims should be filed. If an organization fails to file a claim with Carrier's duly designated representative within the time limits prescribed we are compelled, by agreement of the parties, to dismiss."

Inasmuch as an appeal from the decision of the superintendent mechanical department was not directed to the duly designated representative of the Carrier, i.e. the assistant director of personnel, within the prescribed period set forth in Article V of the agreement of August 21, 1954, the instant claim is, in accordance with the provisions thereof, null and void and should, therefore, be dismissed. We respectfully request the Board to so hold.

(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.

The fundamental issue involved in this continuing claim is whether claimant, a monthly salaried employe, is entitled to an additional four (4) hours' straight time pay for each Holiday worked by him on his monthly rated position commencing with Washington's Birthday, February 22, 1966 under Rule 4 of the controlling Agreement between the parties.

In the first instance, Carrier contends that the claim must be dismissed pursuant to the provisions of Article V of the August 21, 1964 Agreement prescribing time limitations for filing appeals because the appeal from the decision of Carrier's Mechanical Department superintendent was directed to Carrier's Director of Personnel instead of the assistant Director of Personnel the designated official of Carrier authorized to receive such appeal. Even though Carrier's Director of Personnel had advised Petitioner that appeals should be specifically addressed to his assistant, the appeal was properly made to the office of the Director of Personnel pursuant to the instructions from Carrier pertaining to the progressing of claims and grievances dated September 5, 1963. Under the circumstances, the mere fact that such appeal was addressed to the Director of Personnel rather than his designated assistant,

does not constitute a material breach of the Agreement requiring dismissal of the instant grievance without consideration of the merits.

The question raised herein concerning the proper computation of the claimant's monthly rate of pay under Rules 4 and 8 of the applicable agreement has already been considered by this Division in our Award No. 4799 as well as Interpretation No. 1 to said Award, dated July 12, 1966. Accordingly, the doctrine of stare decisis is applicable in this dispute, and the instant claim will be sustained to the extent of an additional payment of 4 straight time hours for each holiday worked by claimant on his monthly rated position commencing with Washington's Birthday, February 22, 1966.

AWARD

Claim is sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1969.