



Award No. 5845

Docket No. 5728

2-N&W-CM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, the Carrier improperly compensated Carman William Bliss for services performed on May 11, 12, 18 and 19 (rest days) and for May 13 and 14, 1967, which days were his regular assigned work days and was arbitrarily laid in by the Carrier.
2. That accordingly, the Carrier be ordered to compensate the aforementioned Carman in the amount of eight (8) hours at time and one-half the current leader rate for services performed on each of his regular assigned rest days of May 11, 12, 18 and 19; also eight (8) hours at straight time leaders rate for May 13 and 14, 1967.

EMPLOYEE'S STATEMENT OF FACTS: Carman William Bliss, hereinafter referred to as the claimant, is regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, at South Lorain, Ohio, and who holds a regular bid assignment on repair track, Saturday thru Wednesday, 7:30 A.M. to 4:00 P.M., with rest days of Thursday and Friday (two days of such assignment as relief leader, Saturday and Sunday), was arbitrarily assigned by the carrier to fill a vacancy which was created by Joseph E. Ackerman, repair track leader, who also holds a repair track leaders position, Monday thru Friday, 7:30 A.M. to 4:00 P.M. with rest days of Saturday and Sunday, who moved from his position to assume the foreman's position while the regular foreman, E. L. Eglinski was on vacation from May 9 to May 20, 1967 inclusive.

A note from the foreman, Edward Eglinski, signed as Ed, to leader Joseph Ackerman, addressed as Joe, dated 5/7, stating:

"Mr. Cook" (Master Mechanic) "has agreed to allow Wm. Bliss to work in your place during my vacation. Use him Monday thru Friday and use Joe Duderkevich, E. Winkler or L. Bring on Sat and Sunday."

In the present issue, Mr. Bliss is taking a position contradictory to that previously taken. At no time has he stated he did not want to work the position in question, that he was not qualified nor available for the work, nor that a senior employee had requested the work. He accepted the work when it was assigned to him, however, has not conceded that he assumed Mr. Ackerman's work week assignment when he accepted his temporary position.

In summary, carrier has shown:

(1) That claimant was assigned and did work the position of leader during the period May 9 through May 20, 1967, therefore, he did not work his rest days nor was he withheld from service on two of his regularly assigned work days.

(2) Rules 16 and 17 clearly provide that vacancies of less than thirty (30) days do not have to be bulletined and this vacancy was known to be less than this time.

(3) Rule 5 excepts the payment of the overtime rate in instances such as this when an employee is changing assignments.

(4) Disputes of this nature have been conclusively settled by your Board in favor of the carrier.

The carrier submits that the claim has no merit and requests a denial by your Board.

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 papearance at hearing thereon.

Claimant's regularly assigned work week was Saturday through Wednesday hours 7:30 A.M.-4:00 P.M.; rest days Thursday and Friday. On Saturdays and Sundays he worked as repair track leader. Monday through Wednesday he worked as repair track carman.

Repair track leader Ackerman had a work week of Monday through Friday; 7:30 A.M.-4:00 P.M. with rest days Saturday and Sunday.

Foreman Eglinski was on vacation during the period May 9-20, 1967. Ackerman was assigned to fill the temporary vacation vacancy. Claimant was assigned to fill the resultant temporary vacancy in Ackerman's position. As a consequence he worked Thursdays and Fridays May 11, 12, 18 and 19 which were rest days of his regular assigned position — for this he claims eight hours for each of those days at time and one-half. Further, he claims eight hours at straight time rate for the days Saturday and Sunday May 13 and 14, work days of his regularly assigned position and rest days of the temporary vacancy he was filling — this on the theory that he was available to work his regularly assigned position on those days.

Petitioner avers that Carrier "arbitrarily" assigned him to the temporary vacancy on the higher rated repair track leader position. In the record made on the property it adduced no evidence to support the statement.

We find no Rule of the Agreement which was violated by Carrier in assigning Claimant to the temporary vacancy; nor, do we find, in the record made on the property, that Claimant was required to fill the position against his will. In the absence of such evidence it must be conclusively presumed that Claimant willingly accepted the temporary assignment to the higher rated position. Claimant, therefore, assumed the work week and its rest days during the period he filled the temporary vacancy. We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1970.