



Award Number 5867

Docket Number 5616

2-N&W-CM-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

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

NORFOLK & 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 A. Stultz for his service performed on his birthday, July 4, 1966, which was also his rest day.

2. That accordingly, the Norfolk and Western Railway Company be ordered to additionally compensate Carman A. Stultz in the amount of eight (8) hours at time and one-half rate of pay for working his birthday, July 4, 1966.

EMPLOYEE'S STATEMENT OF FACTS: Carman A. Stultz, 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 repair track from the hours of 7:00 A.M. to 3:30 P.M., with one-half hour for lunch, and rest days of Sunday and Monday. 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, Monday, July 4, 1966, which was also the claimant's rest day. Claimant was compensated for July 4, 1966, as follows:

Eight (8) hours at punitive rate of pay for services performed on his rest day July 4, 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 July 26, 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 of the Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

Position of Employee:

It is respectfully submitted that the Carrier violated the terms of the controlling agreement and damaged the claimant when it failed and refused

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 an 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.

This Carrier now has approximately 6,000 Shop Craft employees. It is aware of only three (3) claims ever having been presented asking for two time and one-half payments for one act of service. One of the claims is herein under consideration and the others are presently being considered by your Board. Carrier states that no such payment has been made to its Shop Craft employees in at least the last thirty years and perhaps never, and other than the three recent claims mentioned, the employees have not requested such payment. Certainly, this long history reflects the parties understanding of the rules.

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.

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 employees 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 was regularly employed as a Carman by the Carrier at Muncie, Indiana. His assignment was from 7:00 A.M. to 3:30 P.M. five days a week, with rest days of Sunday and Monday. He worked the assignment on Monday, July 4, 1966 a holiday, which was also his rest day and his birthday. Claimant was paid eight hours at the time and one-half rate for services performed on his rest day and eight hours at straight time for his birthday-holiday.

Claim is for additional compensation of eight hours at the time and one-half rate for working the birthday-holiday.

In applying the holiday pay provisions of Article II of the February 4, 1965 Mediation Agreement, the findings of the majority of the Awards of this Division sustain payment of a separate day at the time and one-half rate for work performed by a covered employe on a rest day which is also his birthday-holiday, (Awards 5217, 5331, 5337, 5401, 5402, 5412, 5543 are typical). The rationale of these findings appears to be that the employe is entitled to such payment as a matter of contractual right under two separate agreements, i.e., the Schedule rules of the agreement between the parties and Section 6 of Article II of the Mediation Agreement. We agree with that theory and find under the doctrine of *stare decisis* that it applies and is controlling here.

Accordingly, the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. R. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April, 1970.