



Award Number 5869

Docket Number 5621

2-GN-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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**GREAT NORTHERN RAILWAY COMPANY
(King Street Passenger Station)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carrier improperly compensated Carman-Welder Thomas Rutlege for services performed on his birthday-holiday and rest day August 5, 1966.
2. That accordingly, Carrier be ordered to additionally compensate the above named employee an additional eight hours, at the rate of time and one-half account of said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman-Welder Thomas M. Rutledge, hereinafter referred to as the Claimant, is a regularly assigned employee at the King Street Passenger Station, a jointly owned and operated facility of the Great Northern, hereinafter referred to as the Carrier, and the Northern Pacific Railroad Company.

Friday, August 5, 1966, was not only the claimant's birthday-holiday, a holiday recognized by the applicable Agreement, but was also the Claimant's regularly assigned rest day. He was required to work eight hours that day and was compensated eight hours at pro rata rate for his birthday; eight hours at the time and one-half rate for working his rest day.

A claim was filed on September 1, 1966 on behalf of the claimant requesting eight hours additional pay at the time and one-half rate for services claimant performed on his birthday-holiday.

When the forces on a holiday are not reduced, under the terms of the Agreement, the employees are called on the basis being first out on their rest days on the overtime list on the shift involved.

Claimant was on his rest day and was first man out on the overtime list for the shift involved and was called to work on his rest day August 5, 1966.

August 5, 1966 was also the birthday-holiday of the Claimant.

Claimant submitted time cards, for services performed on this date, in the amount of eight (8) hours for birthday-holiday pay: eight (8) hours for

"The rate of time and one-half for work performed because of working through a period which should be allocated to a vacation, working on a holiday, working on a rest day or working in excess of eight hours in a day is a premium rate; the purpose of which is to discourage the Carrier from requiring employees to work at such times. By the mere incidence of a holiday and a day which is treated as a vacation day for bookkeeping purposes coming together, the premium cannot be converted to triple time. And, it must be considered as triple time under the employees' theory since there is no more than eight hours worked and for that time worked they are seeking twenty-four hours pay. This is more than just pyramiding premiums; for the premium is 1/2 time, but under the employees theory there would be added a premium of one and one-half times the basic rate to arrive at twenty-four hours' pay for the eight hours worked on the holiday which also happened to be a 'vacation' day. Assuming the correctness of the employees' theory, it would logically follow that if the claimants here had been required to work in excess of eight hours on the dates of claim, they would then be entitled to pay at 4 1/2 times the basic rate for the overtime hours. It is doubtful that any such absurd result was intended by the premium pay rules.

"We think it is clear that in the absence of rules showing a clear intent to the contrary (and we are not acquainted with any nor cited to any) that the premiums required for working on a vacation day which also happens to be a holiday were designed to operate on a concurrent non-cumulative or non-consecutive basis and that they were not intended to be pyramided. Consequently the proper payment for the time actually worked by the claimants on December 26, 1960 was one and one-half time."

In view of the Organization's bargaining approach since 1949 to similar issues involved in their Section 6 notices and demands, the extensive practice that has developed on this property, and the precedent established by this Board, it is quite clear that Schedule Rule 16 and Article II, Section 6(g) of the November 21, 1964 Agreement simply require that a specified rate of pay is to be applied to work performed by an employee on a holiday that is also his rest day. That rate of pay does not exceed the time-and-one-half rate under any circumstances, and there is nothing to indicate that the rate and minimum payment under any one rule is to be separated from and made exclusive of the rate and minimum payment which might also be applicable to the same work under a different rule.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. There is no language in Schedule Rule 16 or any other existing rule or agreement which indicates that an employee who works a rest day which is also a holiday is entitled to a single payment computed at the triple-time rate or duplicate payments computed at the time-and-one-half rate.

2. On the contrary, Rule 16 specifically provides that "Service performed on an employee's assigned rest days and * * * legal holidays * * * shall be paid for at the rate of time and one-half" (Emphasis added)

3. The Organization's representatives have admitted in testimony before various Presidential Emergency Boards that an employee working on a holiday-rest day is paid only once at the time-and-one-half rate.

4. The several unsuccessful national negotiations engaged in by the Organization to obtain penalty payments greater than the time-and-one-half

rate for working on a holiday-rest day is strong evidence that the existing rules and agreements contain no penalties such as claimed in this case.

5. Employees representing by the petitioning Organization on this property have not received the rate demanded in this case even though the Schedule rule in question has existed in its present form for many years.

6. Second Division Awards 5317, 5318 and 5319 have already specifically repudiated the same basic contentions advanced by the petitioning organization in this case.

7. Additionally, the various Divisions of the National Railroad Adjustment Board have consistently rejected claims demanding duplicate payments and penalties for a single period of service.

8. The Organization's claim is totally unjustified and unreasonable.

For the foregoing reasons, the Carrier respectfully requests that the claim of the employees be denied.

All of the evidence and data contained herein has been presented to the duly authorized representation of the Organization.

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employ or employes involved in this dispute are respectively carrier and employee 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.

This is another of several disputes over the proper method of compensating an employee covered by the November 21, 1964, Mediation Agreement (Agreement) who performs service on his rest day which is also his birthday-holiday.

The Board has heretofore held that such employee is entitled to be paid a day at time and one-half for service performed on his rest day and an additional day at that rate for service performed on his birthday-holiday (Awards 5402, 5543, 5603, are typical).

The record in this case, however, contains credible and uncontroverted evidence that the Carrier and the Organizations representing Shop Craft employes on this particular property have followed a practice of applying a single time and one-half rate for work performed on either a simultaneous rest day-holiday or a rest day-birthday. (Carrier's Exhibits 10 through 15).

Article II, Section 6(g) of the Agreement provides:

"(g) Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday." (Emphasis supplied).

Accordingly, the existing practice on this property as described above applies and governs the method of computing the compensation due Claimants in this case. He was paid in accordance therewith. Consequently, the

claim for an additional eight hours at the time and one-half rate may not be sustained.

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 9th day of April, 1970.