# Award No. 5903
# Docket No. 5687
# Z-SLSW-CM-'70

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.**

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## PARTIES TO DISPUTE:

### SYSTEM FEDERATION No. 45, RAILWAY EMPLOYES' DEPARTMENT, A. F. L.-C. I. O. (CARMEN)

### ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the rules of the current agreement, the Carrier improperly compensated Lead Car Inspector-Console Operator J. B. Thompson, Pine Bluff, Arkansas, for the July 4, 1967 Holiday, while on his assigned vacation period, July 3 through 21, 1967.

2. That accordingly, the Carrier be ordered to additionally compensate the aforesaid employe for an additional twelve hours for July 4, 1967.

EMPLOYES' STATEMENT OF FACTS: Lead Car Inspector-Console Operator J. B. Thompson, hereinafter referred to as the claimant, with car inspector's seniority date as of May 9, 1947, was regularly employed as lead car inspector-console operator at Pine Bluff, Arkansas in the Gravity Yard of the St. Louis Southwestern Railway Company, hereinafter referred to as the carrier. Lead car inspector-console operator assignments are bulletined to work seven days a week around the clock in one of the four towers in the Gravity Yard, and his duties consist of reading hot box detector tape on each train that comes in, keeping records of bad order cars and "catch cars," relaying information from yard master to car foreman and vice versa, relaying train information and giving instructions to car inspectors on the ground, and keeping inspection records on all trains both inbound and outbound.

Claimant was regularly assigned on the first shift, working 7:00 A.M. to 3:00 P.M., Monday through Friday, with Saturday and Sunday rest days, when his regular scheduled vacation started on July 3, running through July 21, 1967. His assignment was filled for the entire period by vacation relief employes who were qualified to work the lead car inspector-console operator's job, one of whom was Carman J. E. Purtle, who filled the assignment from July 3 through 7, and he worked the assignment on the holiday July 4. Proof of this fact is furnished by copy of note of instructions, dated June 30, 1967, issued by General Car Foreman G. C. Martin. This note is issued to all foremen concerned with copy to the vacation relief assigned carman, designating the vacancy he is to fill, the hours of assignment, and the period he is to fill

Carrier has the right to determine the number of employes to be worked on holidays. Notice will be posted four (4) days preceding a holiday showing jobs which will not be worked on such holiday.'

Under this special provision the Carrier was not required to have all regularly assigned employes work on the holiday but had the right to determine the number of employes needed for that day and to give special notice accordingly. Therefore the work of claimants' positions on the holiday was casual or unassigned overtime."

Thus, this identical issue between the same parties involving the same rules was settled by this division almost seven years ago, and there is nothing in the record in this case which would justify a different award. As was stated in findings in Award 3911 (Referee Anrod) of this division:

"Nevertheless, all Divisions of this Board have consistently held that, if a dispute involves the same controlling facts and the same contractual provisions as were submitted for adjudication in a previous dispute, the Award in the prior case will generally be followed, except when such Award is shown to be glaringly erroneous or substantially unfair."

There has been no showing that award 3866 was "glaringly erroneous or substantially unfair". To the contrary, for over six years payment in line with the principle set forth in award 3866 was made to carmen in similar circumstances without protest or claim by the employes.

From these facts it is evident that the holiday involved in this case—July 4, 1967—was properly included in the vacation period, and since, under the special rule relating to the holidays, time worked on such days would have been unassigned overtime for the claimant, his status under the vacation rule was the same as if the position had not been filled on the day involved. Consequently he was not entitled to additional payment claimed (twelve hours or one day at time and one-half rate). He was properly paid one day at pro rata rate.

Carrier respectfully submits that the claim for an additional twelve hours' pay is not supported by the rules and should be 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 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.

During the summer of 1967 Claimant J. B. Thompson was regularly assigned as Lead Car Inspector-Console Operator, Gravity Yard, Pine Bluff, Arkansas. He worked a 7 P.M.-3 P.M. Monday through Friday schedule, with Saturday and Sunday rest days.

Lead Car Inspector-Console Operator assignments are bulletined to work seven days a week around the clock in one of four towers. The duties of the position include reading hot box detector tape on each train that comes in, keeping records of bad order cars and "catch" cars, relaying train information and giving instructions to Car Inspectors on the ground, and keeping inspection records on all inbound and outbound trains.

Claimant was on vacation between July 3 and 21, 1967. His assignment was filled, during this period, by qualified vacation relief employes. On Tuesday, July 4, a contractual holiday, Claimant's post was manned by Carman J. E. Purtle (who worked the assignment from July 3 through 7). Purtle received twenty hours' compensation for working on the holiday Claimant was paid for eight hours at the pro rata rate for that vacation day. Petitioner claims, and Carrier denies, that Claimant should have received twenty hours' pay for the unworked holiday.

* * *

This dispute has an unusual background. Two prior vacation holiday disputes on this property have been adjudicated by the Board, one by the Second and the other by the Third Division.

The first case arose in 1958 and concerned a Carmen's complaint that two Pine Bluff Yard Car Inspectors had been improperly compensated for July 4, 1958. Car Inspectors at that Yard were assigned to two shifts, seven days a week, and operations were continuous throughout the year. It had always been the practice for all car inspectors to work all holidays falling within their work week assignments. Both Claimants were replaced, during their summer vacations, by vacation relief Car Inspectors who, for work on July 4, 1958, received twenty hours' pay. Vacationing Claimants received eight hours pro rata pay.

The Carmen argued to the Second Division that, under Article 7(a) of the December 17, 1941 Agreement and its agreed interpretation Claimants were entitled to twenty hours' pay since

> "An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> "This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier."

Carrier, on the other hand, argued to the Second Division that, under Rule 3-Overtime of the schedule agreement, it had the right to determine the number of employes to be worked on any holiday. Accordingly, it contended, any holiday work which was required was "unassigned" within the meaning of Vacation Agreement Article 7(a).

In Award 3866 (Referee Johnson) the Second Division ruled in 1961 that, since under the special provision of Overtime Rule 3-2 Carrier was not required to have all regularly assigned employes work on the holiday but could determine the number of employes needed, work performed on such holiday constituted casual or unassigned overtime. The Board noted that this special Rule 3-2 distinguished the case from others, decided differently, in which Claimants' assignments customarily worked on holidays **"without Carrier's option to determine which were and which were not to work".** (Emphasis added). The special provision on which the Board relied provided:

> "NOTE: The practice of regularly assigning employees by bulletin to work on holidays and men called to fill their places on such regular bulletin assignments may be continued. In the application of amended Rule 3-2, it is understood and agreed the Carrier has the right to determine the number of employees to be worked on holidays. Notice will be posted

four (4) days preceding a holiday showing jobs which will not be worked on such holiday."

From 1961 until 1965 Award 3866 was followed on the property, at least insofar as Carmen-represented employes were concerned. In February 1965 the Third Division (Referee Reagan) issued Award 13278 involving Carrier and the Order of Railroad Telegraphers. The dispute in that case, insofar as is here relevant, concerned holiday pay for Thanksgiving Day 1957 and Labor Day 1958. The Third Division held that "a vacationing employe is entitled to receive for a holiday falling within his vacation period just what he would have received had he worked if (1) the position regularly works on the day on which the holiday falls; (2) the position has always been filled on the holiday; (3) the position was filled on the particular holiday for which claim is made". No reference to Award 3866 was made in this decision.

On April 19, 1965 Management informed its representatives of the ruling in Award 13278 and instructed them to apply it throughout the system. Thereafter employes represented by the Carmen, as well as others, were compensated for vacation holidays in accordance with 13278.

On May 17, 1967, however, Management rescinded its 1965 directive, noting in a staff memo, that "it was not intended that the Third Division NRAB Award quoted in our letter be applied to Shopcraft employees. In 1961, Second Division Award No. 3866 on this property denied such claims . . . under the provisions of Rule 3 of the Shopcraft Agreement. . ." Soon thereafter Claimant Thompson's July 4, 1967 grievance arose.

The Board has always attached considerable weight to precedent, for reasons which need not be reiterated here. If there exists an applicable precedent it is normally followed.

The question here, really, is whether Award 3866 or 13278 should be applied since we are not dealing with a case of first impression. The parties' present contentions and arguments are not new; virtually all were presented in the prior disputes (although, of course, additional Board awards have been rendered in the interim).

After careful consideration, it is our judgment that Award 3866 must be deemed controlling. Note the following: (1) The facts in this case are virtually identical with those in Award 3866. (2) There has been no change in Overtime Rule 3-2 since the prior award. (3) The ORT Agreement, under which Award 13278 was rendered, contained no such special rule. It cannot be held, therefore, that 13278 reversed or overruled 3866. (4) The 1965-1967 practice of applying 13278 to employes covered by the Carmen's Agreement, while providing a windfall for some individuals, was clearly not contractually or judicially required, nor was it the result of negotiations between Carrier and Petitioner. Carrier was consequently no more obliged to continue than it was to institute the practice.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.