

Award No. 5995

Docket No. 5850

2-RDG-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements Car Inspector W. A. Fisher is entitled to be additionally compensated at the time and one-half rate of pay for 8 hours for Labor Day, Monday, September 2, 1968.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector W. A. Fisher, hereinafter referred to as the claimant, is employed at Pottsville Passenger Station, Pottsville, Pennsylvania. Claimant was on vacation, Labor Day, September 2, 1968. Car Inspector A. Chekan worked claimant's position while claimant was on vacation.

For service rendered on this day, Vacation Relief Car Inspector Chekan received eight (8) hours' straight-time pay and eight (8) hours' time and one-half rate of pay, a total of twenty (20) hours' straight-time pay.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that the carrier has declined to adjust same.

The Agreement effective January 16, 1941 and the Vacation Agreement of December 17, 1941, as they have been subsequently amended, are controlling.

POSITION OF EMPLOYEES: The employees submit that the claimant is entitled to the rights and protection of the controlling agreements and particularly Article 7(a) of the Vacation Agreement of December 17, 1941, which reads as follows:

"7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:

by practice and agreement such work was at the option of the management. The organization offers no evidence that the holiday work was part of the assignment; instead, naked assertions of non-existent fact are tendered as proof. Second Division Award 4182 determines that speculation or naked assertion by the organization cannot provide the basis for a demand for additional holiday pay.

Second Division Award 3477 denied an employee's claim for additional pay when Christmas fell within his vacation period:

"... agreement rules are clear, specific and unambiguous as applied to the facts in this case. The plain language of these rules indicates that the carrier was not required to grant Claimant Davis more compensation for Christmas Day, 1957, than the eight hours straight time pay which he received for that day. Said rules expressly provide that a holiday falling on a work day of the employee's regularly assigned work week while he is on vacation shall be considered as a work day for which the employee shall be paid in the amount of eight hours at straight time rate. No other agreement rules can be found which required any additional pay under the subject factual circumstances." (See also Second Division Awards 3017 and 3284.)

In Second Division Award 3866, Referee Johnson considered a rule similar to Rule 6 whereby the carrier had the option to determine the number of employees to be worked on holidays. ("... 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. . . ."), and concluded:

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

This special rule distinguishes the present case from Awards 2566, 3104 and 3766, in which the claimants' assignments were regularly assigned and customarily worked on holidays without Carrier's option to determine which were and which were not to work.

Claim denied."

Carrier submits that the Brotherhood has failed to meet its burden of proof of showing the work of the claimant's position to have been other than casual or unassigned. Clearly, the recommendations of the Presidential Emergency Boards, the applicable agreement rules, and the precedent of Second Division Awards warrant the denial of the instant claim.

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

The carrier or carriers and the employee or employees 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.

The question of whether Claimant was entitled to additional compensation was determined by this Board in Award No. 5916, which held that under the circumstances additional compensation was warranted. As was stated there:

"Under Awards 5434 and 5017 of this division, the effect of Article 7 (a) is to give an employe on vacation the daily compensation for such assignment unless it is shown to be casual or unassigned overtime."

Further support of this position is found in Awards 5827, 4308, 3766, 3104 and 2566 of this division, and Third Division Awards 14857, 14640 and 14456. ✓

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5995

The Carrier's dissent to Award No. 5916 is equally applicable to Award Nos. 5995 and 5996.

For the reasons stated in the dissent to Award No. 5916, we believe the majority erred in the above Award.

H. F. M. Braidwood
W. R. Harris
P. R. Humphreys
J. R. Mathieu
H. S. Tansley