Award No. 6156
Docket No. 5983
2-RDG-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Car Inspector Harry A. Thompson was improperly compensated under the terms of the current agreement for November 28, 1968 (Thanksgiving Day), while on vacation.

2. That accordingly, the Carrier be ordered to additionally compensate Car Inspector Harry A. Thompson for eight hours at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: Car Inspector Harry A. Thompson, hereinafter referred to as the claimant, is employed at Pottsville Station, Pottsville, Pennsylvania, assigned work days Wednesday through Sunday, 2nd trick, rest days Monday and Tuesday. Claimant was on vacation Thanksgiving Day, November 28, 1968. Vacation Relief 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 8 hours' straight time pay and 8 hours' time and one half rate of pay. A total of 20 hours' straight time pay. Claimant Thompson only received eight (8) hours' straight time pay for this day, while on vacation.

Under date of December 16, 1968, claimant presented claim for 8 hours' time and one-half pay which he lost by being on vacation instead of working.

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

The agreement effective January 16, 1940, as corrected February 1, 1951, and the vacation agreement of December 17, 1941, as they have been subsequently amended, are controlling.

"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 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."

See also Second Division Awards 3563, 4182, 4283, and 4504.

Carrier submits that the Brotherhood has failed to meet its burden of proof of showing the work of the claimant to have been other than casual or unassigned overtime. Indeed, the Brotherhood does not contend that carrier lacks the prerogative, by custom and agreement, to determine whether claimant's position would have worked on the holiday. Therefore, a denial award is warranted.

For the reasons advanced herein, carrier submits that the instant claim should be denied in its entirety.

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.

Claimant in this case was a regularly assigned car inspector at Carrier's Pottsville passenger station, being assigned to the second shift with Monday and Tuesday designated as rest days. Thanksgiving Day, November 28, 1968, occurred during the claimant's vacation period, and he received one day's holiday pay and one day's vacation pay. A vacation relief car inspector worked claimant's position while claimant was on vacation, having been compensated by the Carrier for service rendered on Thanksgiving Day, a total of twenty (20) hours straight time pay, consisting of eight (8) hours straight time pay and eight (8) hours at time and a half. Claimant, in addition to the eight (8) hours straight time vacation pay and the eight (8) hours straight time holiday pay received, demands an additional eight (8) hours pay at time and a half, or a total of three and a half days at straight time rate because of his position having been worked by his relief on the holiday.

The Organization, on behalf of Claimant, cites 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:

(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The Organization further relies, under date of June 10, 1942 on an agreed upon interpretation of Article 7(a) by opposing factions. This interpretation reads as follows:

"Article 7(a) provides:

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."

Arguendo, the Organization states that Claimant was worse off, since he received only a total of sixteen (16) hours straight pay, whereas if he had worked, he would have received a total of twenty (20) hours straight time pay. They further aver that claimant's position regularly works all holidays, that the position has always been filled on holidays, and was filled on the holiday in question.

The Carrier contends that holiday work is by practice and agreement regarded as casual and unassigned, that it has the absolute right to determine the number of employes to be worked on holidays, relying on Rule 6, Overtime, Holiday and Rest Day Work, in effect since 1940, which provides:

"NOTE: In the application of Rule 6, it is understood and agreed the Carrier has the right to determine the number of employes to be worked on holidays."

Carrier also relies on the National Agreement of September 2, 1969 between the National Railway Labor Conference and Eastern, Western and Southeastern Carriers' Conference Committees and the employes of such Carrier represented by the Organizations comprising the Railway Employes' Department, AFL-CIO. Article II, Holidays, Section 1, effective January 1, 1968, provides:

"Section 1. * * * * *

* * * * *

Each hourly and daily rated employe shall receive eight hours pay at the pro rata rate for each of the following enumerated holidays:

* * * * *

* * * * *
* * * * *

Thanksgiving Day

(a) Holiday pay for regularly assigned employes shall be at the pro rata rate of the position to which assigned."

Article II, Section 3, specifically provides:

"Section 3. Article II of the Agreement of August 21, 1954, as amended, is hereby further amended by the addition of the following Section 7:

Section 7 (a) When any of the seven recognized holidays enumerated in Section 1 of this Article II, or any day which by agreement, or by law or proclamation of the State or Nation, has been substituted or is observed in place of any of such holidays, falls during an hourly or daily rated employe's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for therein provided he meets the qualification requirements specified. The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes."

Carrier alleges that the intent and purpose of the September 2, 1969 Amendment was to eliminate the confusion and uncertainty existing in the interpretation of the 1954, 1960, 1964 and 1965 agreements, and that the above cited amendment abolished the need to apply the 'casual or unassigned overtime rule' and guaranteed the vacationing employe his holiday pay.

A review of the evidence of record before us indicates that Claimant's position was regularly worked on the day on which the holiday occurred, that the position was always filled on the holiday and, further, that the position was filled on the particular holiday for which the claim is made.

We reject the Carrier's position that this work constituted casual or unassigned overtime.

The September, 1969 Amendment supplements other pre-existing agreements to the extent that an employe on vacation will not only receive 8 hours vacation pay, but also 8 hours holiday pay for certain specified holidays. It does not provide for the employe to receive an additional 8 hours at the punitive rate if his position is worked while he is on vacation and the work occurs on the specified holidays. However, the June 10, 1942 interpretation of Section 7(a) does provide that claimant shall be no worse off than if he had worked the position. Since he has received 16 hours total straight time pay and his replacement has received 20 hours total straight time pay, he is entitled to an additional 4 hours at straight time rate, making a total of 20 hours, the same rate received by his relief. Subsequent amendments to Section 7(a) have not changed its meaning and intent. We will sustain the claim in accordance with this opinion as expressed.

AWARD

Claim sustained in accordance with Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1971.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.