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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6507
Docket No. 6316
2-LI-EW-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 156, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Long Island Railroad Company

Dispute: Claim of Employees:

1. That the following employees were deprived of the double time rate of pay, worked on Sunday, October 24, 1971, when they were called out to do work at Wreck Lead.

G. H. Virrelli (10 hours) 8 A.M. - 4 P.M.
G. DaLeo (12 hours) 7 A.M. - 5 P.M.
2. That the above mentioned employees be compensated at the double time rate of pay instead of the time and a half rate they received for work performed on this day.

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 were given due notice of hearing thereon.

On November 24, 1971, an Award was rendered by a Special Adjustment Board, established pursuant to Section 3, Second of the Railway Labor Act as amended by Public Law 89-456, and designated by the National Mediation Board as Public Law Board No. 790. Said Award, among other matters, dealt with a dispute between the same Carrier and Organization as are parties hereto, involved the same provision of the Controlling Agreement between them as that before this Board in the instant matter and the facts are undisputedly similar in nature. Said Award held that Article VII - Sunday work of the Agreement between the parties hereto, dated January 15, 1971, required the Carrier to pay double time their regular rate of pay to work on Sunday by the Carrier and if they exceed the number of such employees

regularly assigned to Sunday work at the time said Agreement was executed. It is noted that the Carrier member of Public Law Board 790 entered an extensive and vigorous dissent to the determination by the majority of said Board.

By refusing to apply the Public Law Board 790's interpretation and application of the hereinabove referred to Article VII of the Controlling Agreement to the current claim, the Carrier is seeking, in effect to have this Division of the National Railroad Adjustment Board review and reverse the holding of Public Law Board 790. It charges that said Award is "palpably in error", but nevertheless complied with it and the Order stemming therefrom.

It is perforce essential that this Board weigh the essence of Carrier's submission in relation to the basic objectives of the Railway Labor Act which this Board was established to accomplish, pertinent hereto being:

"GENERAL PURPOSES

Section 2. The purposes of the Act are: (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

We are also mindful of the statutory provisions to the effect that:
"... Awards shall be final and binding upon both parties to the dispute".
(Section 3, First (M) of the Act as amended.) and the limitation upon the Judiciary set forth in Section 3, First (p.) of the Act, to wit:

"...The district courts are empowered, ... to enforce or set aside the order of the division of the Adjustment Board: PROVIDED, HOWEVER, That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.5"

All Divisions of the Board have ruled that in order that these underlying concepts be effectuated, we must endeavor "to avoid, whenever possible, rendering inconsistent and conflicting interpretations of ... Agreements where they apply to substantially similar factual situations." Third Division Award 11449.

This Division in Award 3991 (Anrod) stated:

"The rationale underlying those rulings is that in the interest of stable and satisfactory labor relations identical rules must necessarily be given like interpretations. Otherwise, employees doing the same work and covered by the same labor agreement would not be afforded the benefit of equal treatment and equal protection under the law."

In Award 5983 (Dorsey), we held that:

"... a history of conflicting awards does not settle a dispute on the property. It does, indeed, create disputes. Neither party can be expected, reasonably, to honor the awards in which it has not prevailed and, therefore, the only recourse is by petition to this Board which results in issuance of award which adds to the existing conflict in the prior awards. For certain, such a state of affairs does not satisfy the intent of the Congress -- expressed in Section 2 (4) and (5) of the Railway Labor Act ..."

(See also Third Division awards 2526, 3229, 11402, 11449, 13135, 14121, 1358, and First Division Award 20456.)

We must assume that the Carrier herein presented the same basic contentions in support of its urging a denial of the claims before Public Law Board 790 as it has placed before this Board. The majority was satisfied that the provisions of Article VII of the January 15, 1971 Agreement were clear on their face and sustained the Organization's petition. Based upon the entire record before us, we are unable to find that determination to be an unreasonable interpretation and application of the clause. Even if, dealing with the issue "ab initio", we might have reached a different conclusion than did Public Law Board 790, (it is not to be construed that we would), we deem it inadvisable to decide the matter differently at this juncture for the reasons set forth hereinabove and in the cited Awards.

It is regrettable that in its zeal in endeavoring to overturn the Public Law Board 790 Award, the Carrier failed to raise certain data during the processing of the claim which it sought to interpose for the first time on the last pages of its rebuttal, and which might have obviated the invoking of the procedures of this Board if validated. The referred to information is not properly before us and cannot be given any consideration.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1973.