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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6548
Docket No. 6307
2-LI-EW-'73

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

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

Dispute: Claim of Employees:

1. That the following employees were deprived of the double time rate of pay on Sunday, November 28, 1971:

J. B. Beck	7:30 A.M. - 3:30 P.M.
J. DeVito	3:30 P.M. - 11:30 P.M.
	11:30 P.M. - 7:30 A.M.
R. D'Augostino	11:30 P.M. - 7:30 A.M.
G. Pitocia	7:30 A.M. - 3:30 P.M.
B. Jacob	3:30 P.M. - 11:30 P.M.

2. That the above named employees be compensated at the double time rate of pay instead of the time and a half they received on that 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.

The parties entered into an agreement signed January 15, 1971. Article VII, thereof, entitled SUNDAY WORK, provides: "The number of employees to be regularly assigned to Sunday Work shall be limited to the minimum number necessary to maintain service. The parties agree that the number of such employees regularly assigned to Sunday work at the present time shall constitute the maximum number of employees who may be so assigned without penalty. In the event the Carrier should assign more than that number to Sunday work, those so assigned who exceed such maximum shall be paid at the rate of double time."

On Sunday, November 28, 1971, claimants were assigned to work on Sunday, one of their scheduled rest days. The Carrier paid time and one half based on its interpretation of the above Article. The claim is for double time

based on the Organization's interpretation of the Article. Previously, regularly assigned Sunday employees were paid at straight time.

The Organization maintains that the last sentence of the Article in dispute refers to any employee assigned to Sunday work above the maximum number of employees regularly assigned to Sunday work at the time of the Agreement.

The Carrier maintains that the last sentence cannot be taken out of context but must be read together with the rest of the Article. By so doing, the Carrier argues, it is evident that the intention is to pay doubletime only to regularly assigned Sunday work employees who exceed the maximum number who were regularly assigned to Sunday work when the Agreement was reached.

There does not appear to be any dispute about the claimants herein being in excess of the number of employees who were regularly assigned to Sunday work when the agreement was reached which resulted in the language of Article VII, as quoted above.

The same parties litigated the meaning of the same Article VII, based upon the same situation involving different employees at a hearing held before Public Law Board No. 790. The Award of that Board dated November 24, 1971, was in favor of the interpretation argued by the Organization.

The same issue was presented to this Division in two cases which resulted in Awards No. 6507 and 6508, dated May 31, 1973. Both Awards sustained the claims set forth therein, in agreement with the Award set forth by Public Law Board 790. The Awards of this Division cited a number of prior Awards of this and other Divisions of this Board which have consistently adhered to the principle that in order to effectuate the purpose of the Railway Labor Act in establishing this Board, we should avoid inconsistent and conflicting interpretations of Agreements which apply to the same or substantially similar facts.

At this stage, in the face of the Awards made by the Public Law Board and this Division involving the same Agreement and dealing with identical situations, we are not at liberty to pass upon the merits as though they appear for the first time. We may consider only whether or not the Awards reached on this issue are so patently erroneous as to require a different result.

The same arguments have been advanced previously as now appear in the record. The same intentions of the parties with reference to Article VII, have been vigorously asserted in the earlier cases as in this case. We do not have appellate jurisdiction. The prior decisions reached on this issue are not so arbitrary, capricious and incredible as to require a finding tantamount to a reversal of the prior Awards.

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Whatever the far reaching disastrous economic results may be so
pleaded by the Carrier, we do not have the power to apply equitable consideration.

A W A R D

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen RB
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1973.