Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11096
SECOND DIVISION Docket No. 11171
2-SSR-SMW-'86

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(Seaboard System Railroad Company

Dispute: Claim of Employes:

1. That the Carrier, under the Current Working Agreement, failed to compensate Sheet Metal Worker, E. L. King four (4) hours pay at straight time to make up the difference between the time and one-half rate paid to Mr. King, and the double time due him account working seven (7) days in the work week ending September 3, 1984, Osborn Yard, Louisville, Kentucky, which is in violation of the April 9, 1970, General Agreement.

2. That, accordingly, the Carrier be ordered to additionally compensate Sheet Metal Worker, E. L. King four (4) hours pay at straight time rate.

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 employes 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 Claimant, E. L. King, a Sheet Metal Worker at the Carrier's Osborn yard in Louisville, KY, worked 7 consecutive days in a work week which ended on September 3, I984. The 7th day was Labor Day. The Claimant worked all hours of his assignment during the week in question. The Claimant was paid time and one half in accordance with the holiday pay provision in Article 2, Section 5(c).

The Organization argues this payment of time and one half in lieu of double time is a violation of Article 5 of the Schedule Agreement which reads as follows:

> "All, agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment, shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, . . ."

The Organization states the Claimant fulfilled all of the requirements of this section and therefore the Carrier owes the Claimant double time for this day. The Organization argues the Carrier is trying to change the Agreement and can provide no instances where double time has not been paid on the 7th work day.

The Carrier argues that Overtime Rules do not apply to holidays. Holiday work is not overtime work. Both types of service are covered by special Work Rules and special Pay Rules. The Carrier has never agreed to pay double time for holiday work as shown by a historical review of the clauses. The holiday provision and the overtime provision were enacted by Public Law 91-226, and holiday section reads in pertinent part:

> "Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on a holiday are not changed hereby except that, under no circumstances, will an employee be allowed, in addition to his holiday pay, more than one time and one-half payment for service performed by him on a holiday.
>
> NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time for holidays under specified conditions."

The Carrier contends the intent of the Holiday Pay Article was to preserve Holiday Rules in effect, to correct confusion caused by the Birthday Holiday, and to avoid pyramid payments for service performed by an employee on a holiday. The Carrier argues employees are to be paid only once for service performed on a holiday. The Carrier notes that all regular assignments are annulled on holidays, and that any work performed on a holiday would thereby be placed solely under the Holiday Work Rule, and the schedule of any employee prior to or after the holiday is immaterial. Holidays are neither work days nor rest days for the purposes of applying Article 5. This is shown by historical applications of holidays and jury duty occurring during a regular work week.

Upon complete review of the evidence, the Board finds that there is no question that the Claimant would have been entitled to double time if his 7th day had not been a holiday. Seemingly, there are two very clear Rules at odds with each other. Historically, holiday pay has been considered premium pay for the inconvenience of having to work on a recognized holiday. The double time provision in this Agreement is designed to provide a penalty to the Carrier for working employees 7 days in a row. Clearly, the Claimant is not entitled to a pyramiding of premium pay; that is, the penalty for holiday work and the pay for the 7th day. The question remaining before the Board is, which "penalty" is appropriate under the circumstances of this case? The Claimant in this case was required to not only work on a holiday, but to work 7 days in a row. In addition, the note to Article 2, Section 5(c) and Section (d) provide for individual Agreements and existing Rules and practices. Despite the very vigorous and complete arguments put forward by the Carrier, the Board feels that under the circumstances of this case, and because both clauses appear to be very clear, the Board can only conclude the Parties did not anticipate this event. It is the judgment of the Board that the Claimant is entitled to the higher of the two possible premiums, that which is contained in Article 5 of the Schedule Agreement. The Board notes this Award does not affect situations where time is paid for but not worked. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1986.