

Award No. 1564

Docket No. 1451

2-LI-SM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 156, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

**THE LONG ISLAND RAILROAD COMPANY, Debtor
WILLIAM H. DRAPER, JR., Trustee**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current applicable agreement the carrier improperly compensated Sheet Metal Worker—Plumber Peter H. Kramer from 10:00 P.M. on February 22nd to 4:30 P.M. on February 23rd, 1950.

2. That accordingly the carrier be ordered to additionally compensate this employe in the amount of:

(a) Double time from 10:00 P.M., on February 22nd to 8:00 A.M. on February 23rd, 1950 in lieu of only the rate of time and one-half.

(b) Double time from 8:00 A.M. to 4:30 P.M. on February 23rd in lieu of only the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Worker (Plumber) Peter H. Kramer, hereinafter referred to as the claimant, was regularly assigned a tour of duty from 8:00 A.M. to 4:30 P.M. daily, except Saturdays, Sundays, and the seven recognized holidays, namely; New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas. However, the carrier called the claimant to work at 9:30 A.M. on Washington's Birthday, Wednesday, February 22, 1950, and he was used except between 1:30 P.M. and 6:00 P.M., on this date until 4:30 P.M., Thursday, February 23, 1950. For this service the carrier compensated the claimant at no more than the time and one-half rate and only the straight time rate for the last eight hours of his service, from 8:00 A.M. to 4:30 P.M., Thursday, February 23, 1950.

Every effort has been made to compose a settlement of this dispute with the highest designated officer of the carrier and to date he has declined to adjust it.

The agreement, identified as "Maintenance of Way Department," effective March 16, 1945, as amended effective July 1, 1949, is controlling.

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.

The parties to said dispute were given due notice of hearing thereon.

The sheet metal workers of System Federation No. 156 contend carrier improperly compensated Plumber Peter H. Kramer for work performed from 10:00 P. M. on February 22, 1950 to 4:30 P. M. on February 23, 1950, and ask that he be additionally compensated so his pay for this service will be in accordance with the provisions of Rule 5 of the parties' controlling agreement relating thereto.

This division, in its Award No. 1485, held:

"A twenty-four hour day when applied to collective agreements, unless specific exception is made, is the twenty-four hour period immediately following the assigned starting time of his daily assignment."

While the provisions of the parties controlling agreement relating thereto seem to be somewhat in conflict we do not think they create a specific exception thereto but, in fact, affirm it. Consequently, for the purpose of applying the provisions of the parties' agreement, the legal holiday here involved being Washington's Birthday, extended from 8:00 A. M. on February 22, 1950 to 8:00 A. M. on February 23, 1950. Since 18 hours of service were performed by claimant during this period the question arises, on what basis should he have been paid for it?

Rule 6 (a) relates directly to what the pay of an employe shall be who performs service on the seven legal holidays named therein, which includes Washington's Birthday. It is true that Rule 6 (a) also mentions rest days but these are expressly taken out of Rule 6 (a), as to the basis for which services performed on those days shall be paid, by Rule 6 (b). It is apparent that the parties' agreement, for the purposes of pay for services performed thereon, treats rest days and the seven named legal holidays on a different basis. Rule 6 (a) expressly provides that services performed on any of the seven legal holidays named shall be paid for at the rate of time and one-half. That express provision is here controlling. Carrier paid claimant accordingly. As to the services performed between 8:00 A. M. and 4:30 P. M. on Thursday, February 23, 1950, it was properly paid for at the pro rata rate of the position as it was performed during the hours of claimant's regular assignment on that day. This is true because the work performed immediately prior thereto was performed on one of the seven legal holidays.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1952.