

Award No. 2350

Docket No. 2243

2-CUT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman A. H. Manning was improperly compensated for holiday pay for Decoration Day, May 31, Independence Day, July 5, Labor Day, September 6 and Thanksgiving Day, November 25, 1954.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe the difference between Car Inspector's rate of pay, which he was paid for his holiday pay, and Passenger Carman Repairman's rate of pay for May 31, July 5, September 6 and November 25, 1954.

EMPLOYEES' STATEMENT OF FACTS: Carman A. H. Manning, hereinafter referred to as the claimant, is regularly assigned to car inspector job No. 8 on the 7:00 A. M. to 3:00 P. M. shift in the depot of The Cincinnati Union Terminal Company, with twenty minutes for lunch, rest days Saturday and Sunday. On each of the claimant's assigned work days in the year of 1954, his foreman assigned him to perform passenger car repairman's work, for which he was compensated the passenger carman repairman's rate of pay, which is \$2.033 per hour, and there is a difference of \$.044 per hour between the car inspector's rate of \$1.989 and the \$2.033 rate.

The agreement revised September 1, 1949 and agreement and memorandum dated August 21, 1954 are controlling in this dispute.

POSITION OF EMPLOYEES: It is submitted that under Article II—Holidays—of the agreement and memorandum dated August 21, 1954 which reads:

“Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe:

'Rule 11—Filling Vacancies' provides that if an employe is required to fill the place of another employe receiving a lower rate, his rate will not be changed. He was not filling a vacancy, yet the same principle is applicable, therefore, we contend that the employe is regularly assigned at the higher rate and should receive same for holiday pay."

In the above quote, the employes admit in the first sentence that the claimant is a regularly assigned car inspector by bulletin and is so shown on the carrier records. They then take the position he is a regularly assigned car repairman because his time slip is stamped and he receives the higher rate. The claimant cannot be a regularly assigned car inspector and a regularly assigned car repairman. There is only one way an employe can become a regularly assigned employe, and that is to be assigned by bulletin in accordance with our agreement.

Rule 11 has no bearing on this case as there is no vacancy involved nor was claimant filling another job. He simply carried on his work as inspector, but because he made some minor repairs he was allowed the higher rate. Employes admit he was not filling a vacancy yet they contend the same principle is applicable and that he is a regularly assigned car repairman under Rule 11.

Carrier contends the claimant was properly paid under the August 21, 1954 agreement under Article II, Section 1 as he was paid the pro rata rate of the position to which he was assigned.

The present claim is without merit and 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.

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

Claimant is a regularly assigned Car Inspector in the depot of the carrier at Cincinnati, Ohio. The Car Inspector's rate of pay is \$1.989 per hour. On each of claimant's work days in 1954, he was required to perform passenger car repairman's work for which he was paid the passenger car repairman's rate of \$2.033 per hour. On May 31, July 5, September 6 and November 25, 1954, he was paid holiday pay at the car inspector's rate. He claims that he should have been paid the passenger car repairman's rate.

It is not disputed in the record that claimant occupied a position bulletined as car inspector at the car inspector's rate of pay. Nor is it disputed that on every work day in 1954, claimant performed some passenger car repairman's work and he was paid the higher rate of a passenger car repairman on each of such days.

The agreement of August 21, 1954, provides for holiday pay and it in part states:

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe: New Year's Day * * * Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, * * *."

The foregoing rule fixes the rate for holiday pay as "the pro rata hourly rate of the position to which assigned." Claimant was assigned as a car inspector at the car inspector's rate. This is the compensation for holidays fixed by the rule. We cannot change the rule and consequently, claimant was correctly paid at the car inspector's rate.

The record shows that claimant performed some passenger repair work each day and was paid the higher rate of that class of work. If claimant was improperly assigned it may constitute a violation of the agreement that may be corrected in accordance with agreement provisions. But so long as claimant is assigned as a car inspector, his holiday pay is eight hours at the pro rata rate of his assigned position. In other words, the holiday pay rate is fixed by the agreement of August 21, 1954.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.