

Award No. 2437

Docket No. 2352

2-CB&Q-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the applicable agreements the Carrier improperly denied Coach Cleaner H. E. Kimpton holiday pay in the amount of eight (8) hours at the pro rata hourly rate of his regular assigned position on the third shift, 12 Midnight to 8:00 A. M. on Washington's Birthday, February 22, 1955.

2. That, accordingly, the Carrier be ordered to compensate Coach Cleaner H. E. Kimpton in the amount of eight (8) hours at the pro rata hourly rate of the above described regular assigned position for Washington's Birthday, February 22, 1955.

EMPLOYEES' STATEMENT OF FACTS: H. E. Kimpton, hereinafter referred to as the claimant, is employed by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, as a coach cleaner at Galesburg, Illinois, with a seniority date as of October 7, 1942.

Claimant is regular assigned and his assigned hours and work week is as follows:

Saturday	8:00 A. M. to 4:00 P. M.	relieves F. E. Lindeen
Sunday	8:00 A. M. to 4:00 P. M.	relieves F. E. Lindeen
Monday	8:00 A. M. to 4:00 P. M.	
Tuesday	8:00 A. M. to 4:00 P. M.	
Tuesday	12:00 M. to 8:00 A. M.	relieves D. D. Parrish

On February 15, 1955, the carrier posted a notice, notifying employees named on that notice that they would not work on Washington's Birthday. Claimant's name was on the notice, showing that he would not work the third shift, 12 Midnight to 8:00 A. M. on Washington's Birthday, Tuesday, February 22, 1955.

The claimant in this dispute is an hourly paid worker. The organizations in presenting their case to Emergency Board No. 106, presented evidence that holiday pay should be computed on the basis of the hourly rate multiplied by eight hours. That method was also adopted in the agreement of August 21, 1954.

At page 53 of their brief before Emergency Board No. 106, the organizations made it perfectly clear that they were only asking for eight hours' holiday pay. Here they said:

"The employees demand concerning holidays is simply that the railroads get around to giving their employees the same holiday considerations as employees in other industries are enjoying."

Since their witness, Homer, testified that the other industries compute holiday pay by multiplying the hourly rate by eight, there was no difficulty in reaching the same formula in the agreement of August 21, 1954.

Obviously, the only thing before Emergency Board No. 106 was a request by the employees for eight hours' pro rata holiday pay. Yet this claim asks that the carrier pay twice that amount, or sixteen hours' holiday pay. Both the recommendations of the Emergency Board and the agreement of August 21, 1954 limited such payments to eight pro-rata hours.

The undersigned was a member of the Western Carriers' Conference Committee and took an active part as a witness in the Emergency Board proceedings, as well as in the negotiations which culminated in the agreement of August 21, 1954. It was made perfectly clear in those negotiations that under no circumstances would any carrier be obligated to pay more than eight hours' pro rata holiday pay to an employee who did not work the holiday.

The claimant in this dispute is in the same circumstances as any railroad employee who is regularly assigned to work nine, ten or eleven hours each day. There are many such assignments in the industry. Yet when a holiday occurs, and this employee qualifies for holiday pay even though he does not work, such payment is limited to only eight hours at the pro rata rate of his position. Claimant here was assigned to work sixteen hours every Tuesday. When Washington's Birthday, 1955, fell on a Tuesday, he was only entitled to eight hours' pro rata holiday pay under Section 1 of Article II of the agreement of August 21, 1954.

In conclusion the carrier sums up its principal points of argument as follows:

1. The agreement of August 21, 1954 limits holiday pay to eight hours at the pro rata rate, which payment has already been made to Coach Cleaner Kimpton.
2. The instructions issued by Petitioner, the Railway Employees' Department, support Carrier's contention that only eight hours' pro rata pay is due in these circumstances.
3. A review of the proceedings of Emergency Board 106, and the Organization's argument before that Board show that all the employees had asked for was eight pro rata hours' holiday pay, and that is what they agreed to.

In view of the above, this claim must be denied.

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.

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

Claimant H. E. Kimpton worked eight (8) hours on Washington's Birthday, Tuesday, February 22, 1955. His total pay for the day included time and one-half for the eight (8) hours' work performed on a holiday and an additional eight (8) hours at straight time under the holiday pay rule.

Kimpton's regular assignment contained two (2) eight (8) hour shifts starting on Tuesdays. The employees now claim that Kimpton is entitled to be paid an additional eight (8) hours "at the pro rata hourly rate of his regular assigned position on the third shift, Midnight to 8:00 A. M."

The claim is advanced under Article II, Section 1, of the August 21, 1954 agreement. The employees argue that because Kimpton was assigned to a position (8:00 A. M. to 4:00 P. M.) he thus became entitled to receive eight (8) hours' holiday pay and if he was also assigned to another position (12 Midnight to 8:00 A. M.) it also entitled him to be paid.

Article II, Section 1, of the August 21, 1954 Agreement says in essence—
Each employe shall receive **eight (8) hours' pay at the hourly rate of his assigned position.** Having received eight (8) hours' pay at his hourly rate, Kimpton has been paid according to the provisions of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May, 1957.