Award No. 2515
Docket No. 2298
2-MUSCo-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. 2 RAILWAY EMPLOYES' DEPARTMENT A. F. of L.-C. I. O. (Carmen)

MEMPHIS UNION STATION COMPANY

DISPUTE CLAIM OF EMPLOYES:

1. That under the current agreement the Memphis Union Station Company improperly denied Car Inspectors I. Hargett and L. E Pitts employment respectively on Christmas Day, December 25, 1954, and New Year's Day, January 1, 1955, the same being involved in their regularly assigned work weeks of 40 hours consisting of 5 days of 8 hours each.

2. That accordingly the Memphis Union Station Company be ordered to make these employes whole by additionally compensating each of them in the amount of 8 hours at the time and one-half rate on each of the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: The Memphis Union Station Company, herein after called the carrier, maintained at the Union Station three shifts of carmen around the clock each calendar week in pursuance of the general rules of the current agreement effective September 1, 1949, made by and between the carrier and System Federation No. 2 in pursuance of the Amended Railway Labor Act.

The carrier established these positions, consisting of a work week of 40 hours, 5 days of work of 8 hours each, with 2 consecutive days off in each 7 and the work weeks were staggered to meet the operational requirements of the carrier.

The carrier, nevertheless, improperly bulletined Claimant Hargett to not work on his regularly assigned work day, Saturday, December 25, 1954 and Claimant Pitts to not work on his regularly assigned work day, Saturday, January 1, 1955, which were defined as days within their work weeks of 5 days on which the carrier previously made no exceptions to legal holidays.

This dispute has been progressed with the carrier up to and including the highest officer designated thereby to handle such dispute with the consequence that he has declined to adjust it.

For the reasons fully set forth in this submission, the request of the organization should 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 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.

Claimants Pitts and Hargett held regular relief assignments. On Christmas Hargett worked while Pitts was off as directed. On New Year's their status was reversed. Each received 2½ days' pay for the holiday worked and each also received one day's pay for the holiday not worked. Both now claim an additional 8 hours at time and one-half account of being "improperly denied . . . employment . . . in their regularly assigned work weeks . . ."

This question has been tested before this Division in numerous dockets with various referees, at least one of whom was especially qualified by experience to evaluate the meaning of the Rest day and Holiday service rule.

The weight and authority of precedent, as well as our present reasoning based on the very complete arguments advanced by both parties, lead to the conclusion that there has been no violation of the cited rules.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2515

RULE 1—Section 1—(1) of the controlling agreement, effective September 1, 1949, requires that ". . . the carrier will establish a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each . . ."

The majority apparently relies on the weight and authority of precedent to support the erroneous conclusion that there has been no violation of the cited rules. The carrier by refusing to work the claimants on Holidays coming within their regularly assigned work week deprived them of part of their regular assignments, and the findings of the majority ignore the carrier's duty under the terms of the agreement to work on Holidays employes assigned to work-weeks that include those Holidays.

Notwithstanding the frequency with which the conclusion of the majority has been reiterated, there stands, as a protest against its repetition, the schedule agreement which recognizes and preserves the rules, rates of pay, and working conditions of employes, such as the instant claimants.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink