Award No. 3152
Docket No. 2984
2-L&N-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That under the terms of the existing agreements Carman Bert Lewelling was insufficiently compensated for May 30 (Decoration Day) 1957, and

2—Accordingly the Louisville and Nashville Railroad Company be ordered to additionally compensate this employe for 8 hours at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Carman Bert Lewelling, hereinafter referred to as the claimant, holds seniority at the carrier's Knoxville, Tennessee facilities as of April 28, 1947 as a carman with a work week assignment of Sunday and Monday, first shift, 7:30 A. M. to 3:30 P. M. Tuesday, Wednesday and Thursday, third shift, 11:30 P. M. to 7:30 A. M. (regular relief assignment).

The claimant started his vacation at the beginning of his shift on June 13, 1957. The vacation of the claimant included May 30 (Decoration Day) 1957.

The third shift position on Thursday, May 30 (Decoration Day) 1957 was worked from the holiday overtime board and would have been worked by the claimant had he not been on vacation.

The claimant was compensated for 8 hours at straight time rate for May 30, 1957.

In the handling of all identical cases prior to the instant case, the employes were compensated for 8 hours at straight time rate, plus 8 hours at

tunity for work depended on his standing on the overtime board. On occasions, an employe standing to work overtime has been permitted to pass up the overtime provided other employes were available and willing to protect the service.

The applicable agreement provision is Rule 7(a) of the current vacation agreement which provides:

> "(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

By the agreement of August 21, 1954, adopted by this carrier May 20, 1955, each regularly assigned employe, under certain conditions, receives 8 hours pay for (7) named holidays, including Decoration Day. In addition to the foregoing, an employe who performs service on a holiday is paid at the time and one-half rate. A holiday is treated as an unassigned day. An employe is not required to work on a holiday unless he is specifically assigned to work on such day by reason of his standing on the overtime board, and then, on occasion, is permitted to pass up the overtime if other qualified employes are available. While under the August 21, 1954 agreement, regular assigned employes are paid 8 hours for holiday, any work performed on such days is treated as overtime work under Rule 12 of the current agreement. It is work that may or may not be required. It is, therefore, unassigned overtime and constitutes no part of the daily compensation paid by the carrier for such assignment "within the intent of Rule 7(a) of the Vacation Agreement."

Employes' claim has no agreement support and it must, therefore, 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.

Parties to said dispute were given due notice of hearing thereon.

Holiday work opportunity is dependent upon the employe's position on the overtime board rather than his regular assignment so disposition of this claim would normally be governed by our Award No. 2212 and others of like effect.

However, the employes contend that there was an agreed interpretation to the contrary on this property, which by reason of Rule 145 is final and not open to any question. The evidence does not support that contention. There was simply a unilateral interpretation by the carrier in its Circular 3106 to Shop Superintendents and Master Mechanics. Such unilateral interpretations are not final under Rule 145, so it could be and was subsequently reversed by Circular 3149. Thus that contention cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3152.

The majority is incorrect in its findings in stating that Circular No. 3106 was a unilateral interpretation. Circular No. 3106, dated March 28, 1956, was issued as a result of a meeting of minds on this question (See Employes' Exhibit C) and therefore could not be unilaterally reversed.

Under Article 7(a) of the Vacation Agreement the claimant should have been paid for the instant Holiday as claimed.

James B. Zink

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner