

Award No. 3284

Docket No. 2902

2-MP-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier did not properly compensate Car Inspector M. J. Walsh for Labor Day, September 3, 1956.
2. That accordingly, the Carrier be ordered to additionally compensate Car Inspector M. J. Walsh in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. J. Walsh, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as car inspector in the Lesperance Street Yards, St. Louis, Missouri, on the first shift—7:00 A.M. to 3:00 P.M., Monday through Friday with rest days of Saturday and Sunday.

The claimant started his vacation on August 20, 1956, completing his vacation on September 7, 1956, inclusive. The holiday, September 3, 1956, fell within the period of the claimant's vacation and was a day of his regular assigned work week, and had the claimant not been on vacation he would have worked on Labor Day, September 3, 1956. The claimant's job works all holidays and his job was filled on this particular day by the employe relieving him, which is supported by bulletin showing who was assigned to work September 3, 1956, submitted as Exhibit A; however, the carrier declined to pay the claimant his normal take home pay which he would have received had he not been on vacation. The claimant was paid eight (8) hours at the straight time rate, but was denied eight (8) hours pay at the time and one-half rate as provided for in the agreement.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The vacation agreement requires the payment of the daily compensation paid by the carrier to an employe having a regular assignment. The daily compensation paid by the carrier on this assignment is definitely not what is here being claimed. Daily means each day and the carrier certainly does not pay two and one-half day's pay each day on these positions. On a holiday the maximum that could be claimed as daily compensation of the positions is the pro rata day provided for in Section 1 of Article II of the agreement of August 21, 1954. Certainly no further payment is required by the agreement of August 21, 1954.

The following are excerpts from Report to the President by the Emergency Board appointed by Executive Order to handle the dispute out of which was derived the agreement of August 21, 1954. These quotations are from the portion of the report dealing with the holiday pay proposals of the organizations. The underscoring is ours.

"The Board feels that in relation to practice in other industries it would be appropriate for hourly rated nonoperating railroad employes to receive straight time compensation for any of the seven holidays falling on any of the work days of their established work week, subject to certain limitations outlined. In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for the employes to maintain their normal take-home pay in weeks during which a holiday occurs."

"Some may receive more than the average of five; others may receive less. The principle of take home pay will, however, be maintained, and it is not believed that the variations referred to will need to be disturbing."

"Summarizing the Board's conclusions concerning Issue 12 under Holidays, whenever one of the seven enumerated holidays falls on a work day of the work week of a regularly assigned hourly rated employe, he shall receive the pro rata of his position in order that his usual take-home pay will be maintained."

We think it is obvious, from the purposes expressed by the Emergency Board, that there could not be more than the usual take-home pay of an employe included in the daily compensation paid by the carrier for his assignment. That amount has been paid claimants in this case. This conclusion is inescapable in the light of the agreed upon interpretation of Article 7(a) of the Vacation Agreement excluding casual and unassigned overtime as pointed out above.

In conclusion, the carrier states that the issues in dispute in this docket have been resolved in Awards 2212, 2302, 2339 and 2571 by your Division. The carrier does not understand why this claim has been progressed since the contentions made here have clearly been denied. The carrier has shown that the claim is not supported by the rules and lacks merits but the task of your Board is made easy in this dispute in the light of the overwhelming precedent requiring a denial of this claim.

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.

On the authority of our findings in Awards 2212, 2302, 2339, 2571 and 2663, the instant claim lacks merit. See also our Award No. 3017.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3284

The instant claim does not lack merit as stated in the findings of the majority. The instant Holiday fell on one of claimant's assigned work days while he was on vacation. Under such circumstances claimant should have been compensated under Article 7(a) of the Vacation Agreement:

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

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