Award No. 3515

Docket No. 3239

2-PULL-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L - C. I. O. (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company violated the current working agreement when they prevented B. E. Sztukowski, Louis Saviano, J. Fogg, T. S. Jennings, A. T. Marchinda, F. Gavazzo, A. J. Zaremsky, W. A. Zalenski, J. Hartzell, A. E. Glosek, R. L. Kershaw, and S. J. Malcolm, from working their regular bulletined hours on Wednesday, December 25th, 1957.

2. That accordingly they be compensated in the amount that they would have earned had they been permitted to work their regular bulletined hours on December 25th, 1957.

EMPLOYES STATEMENT OF FACTS: Carman craft employes with work week assignments as follows:

"B. E. Sztukowski	— Monday through Friday	— Rest days Sat. & Sun.
Louis Saviano	— " " "	— " " " " "
J. Fogg	— Saturday through Wednesday	— Rest days Thurs. & Fri.
T. S. Jennings	— Monday through Friday	— Rest days Sat. & Sun.
A. T. Marchinda	— Saturday through Wednesday	— Rest days Thurs. & Fri.
F. Gavazzo	— Sunday through Thursday	— Rest days Fri. & Sat.
A. J. Zaremsky	— Saturday through Wednesday	— Rest days Thurs. & Fri.
A. W. Zalenski	— Monday through Friday	— Rest days Sat. & Sun.
J. Hartzell	— Monday through Friday	— Rest days Sat. & Sun.
A. E. Glosek	— Monday through Friday	— Rest days Sat. & Sun.
R. L. Kershaw	— Monday through Friday	— Rest days Sat. & Sun.
S. J. Malcolm	— Monday through Friday	— Rest days Sat. & Sun."

All of whom hereinafter referred to as the claimants are regularly employed and assigned by the Pullman Co., hereinafter to be referred to as the carrier, in the yards of its Buffalo District under the provisions of Rule 1(a) of the controlling agreement.

Prior to Dec. 25, 1957, when a holiday fell on a regular assigned work day of an employes' work week coming under the provisions of Rule 1(a) the employes worked the holiday and was compensated therefor at the rate of time and one-

21, 1954, conclusively indicates that the foregoing interpretation is in line with the purposes which that Board had in mind. See Award 2169. The organization takes the position that it was the purpose of the August 21, 1954 Agreement to require all holidays to be worked which fall within claimants' work weeks and that they have been shortened eight hours at time and one-half rate when they were paid only eight hours at the pro rata rate for not working. It was clearly the intention of Emergency Board No. 106 and the Agreement of August 21, 1954, to provide that the regular assigned employes' take home pay in a work week containing a holiday which was blanked should be the same as a week in which there was no holiday. The agreement cannot reasonably be construed otherwise. We think the agreement provides for pay for 40 hours at the pro rata rate in a work week containing a holiday which is not worked, leaving the time and one-half rate to be applied in addition thereto if the employe is worked on the holiday. The holiday pay rule is personal to a regularly assigned employe because of his status as such. If he is working a position, regularly or temporarily, whose work week contains a holiday, any such employe owning a regular assignment is entitled to the benefit of the rule. See Awards 2169, 2212, 2246, 2254, 2281, 2282, 2297, 2298, 2299, 2300, 2301, 2302.

Under the foregoing interpretation of the rule, claimants were not entitled to work the holidays described in the claim and consequently their claim for eight hours at the time and one-half rate must be denied." (Underscoring inserted.)

CONCLUSION

In this ex parte submission the company has shown that the employes involved in this dispute were not entitled to work on Christmas, 1957. Also, the company has shown that neither the fringe benefit agreement or the rules of the agreement contemplate the management is obligated to work a regularly-assigned hourly-rated employe on a holiday and to pay him 8 hours' holiday pay and 8 hours at the rate of time and one-half. Further, the company has shown that awards of the National Railroad Adjustment Board support management's position in this dispute.

The claim is without merit and 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.

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

The subject claimants, all of whom held regular five day assignments in seven day positions in the carmen's craft in the Buffalo District, were instructed not to work on the contract holiday of December 25, 1957, which fell on a work day of the claimants' work week. All of the claimants were paid holiday pay in the amount of eight hours at straight time rate. The contention is that under the agreement the carrier was required to permit claimants to work on this holiday, and that they are entitled to be compensated in the additional amount

of eight hours at time and one-half rate in accordance with Rule 4. The latter rule deals with the compensation required for work performed on rest days and holidays.

It appears that for many years the Carrier has regularly assigned or required employes in district and agencies to work on holidays occurring on a work day of their work week. This has not been the case with employes in repair shops, however. Beginning December 25, 1957 Carrier introduced a change in its policy with respect to district employes such as those involved in the subject claim. It states that it needed only part of the force in the carmen's craft in the Buffalo District on the holiday in question, with the result that those whose services were unnecessary were instructed not to report that day.

The confronting question is whether the agreement obligates the Carrier to permit employes in districts to work all contract holidays that fall on a work day of their work week. Expressed differently, is the Carrier contractually required to guarantee such employes an opportunity to work such holidays?

The petitioner places principal reliance upon Rule 1, and calls attention to certain differences in language in Rule 1(b) — which refers to employes in repair shops — as compared with Rule 1 (a). Each of these provisions deals with the bulletined hours and work days of the week but neither of them sets forth any work guarantee. The petitioner indirectly concedes the absence of any express language to this effect by contending that since Rule 1(b) states that a "holiday or the day observed shall not be considered a work day," it is understood or inferred that employes in district and agencies (who are covered by Rule 1 (a) must be permitted to work each work day of their work week even though a holiday falls on such a work day.

The normal meaning of the term "holiday" is a day of rest from work. The purpose of requiring penalty rates of pay for work performed on a holiday is to discourage the employer from working employes at that time, as well as to compensate them for being deprived of the opportunity to spend the holiday in the same manner as society in general.

If it were the mutual intent of the parties that the carrier is obligated to incure penalty pay expense by working employes on a holiday, we do not think they would have left this unusual obligation to be understood or inferred from the language of the cited rule. Since there is no express language in this rule or in any other agreement provision to support the organization's contention, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1960.

DISSENT OF LABOR MEMBERS TO AWARDS 3515, 3516, 3517

The majority admit that prior to December 25, 1957 (the date the carrier introduced a unilateral change in its policy with respect to district employes

such as the claimants) the carrier had regularly assigned or required employes in districts and agencies to work on holidays occuring on a work day of their work week. The claimants are employes in districts and under the express terms of Rule 1(a) "The bulletined hours of service for employes in districts . . . shall be 8 consecutive hours per day . . . 5 days per week; i.e., 40 hours per week . . ." This language is plain as to its meaning and should be enforced as made; the record shows that it was mutually agreed to and enforced until the unilateral change made by the carrier on December 25, 1957.

The findings of the majority uphold the carrier in its evasion of the command of Sec. 2 Seventh of the Railway Labor Act that "No carrier, its officers or agents, shall change the rates of pay, rules or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

Edward W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

James B. Zink