Award No. 3516

Docket No. 3261

2-PULL-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO, (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company violated the current agreement when they prevented Electricians G. Schutter, H. Kyde, R. Godsey, L. Norton G. Holt, J. Brandt and W. Cook from working their regular bulletined hours on Wednesday, December 25, 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 25, 1957.

EMPLOYES' STATEMENT OF FACTS: In accord with the provisions of Rule 21 (a) the employes working in the districts and agencies had positions established with eight hours per day, five days per week with no exceptions in any work week. When a holiday occurred the employe holding a position that included that day as a work day was permitted to work and was compensated at the rate of time and one-half for service performed on the holiday in accord with Rule 24. This meant that he worked forty hours that week and was compensated in the amount of forty-four hours. But the employe who held a position that had the holiday as a relief day worked forty hours in his work week and received forty hours' pay. There was no overtime considered in this application of the agreement because this was the employe's regular bulletined hours of service. This was in effect from September 1, 1949 through November 1, 1954.

On November 2, 1954, an agreement was signed providing for eight hours' pay at the pro rata hourly rate of pay to the employe in a position when a holiday fell on one of the work days of this position if he was compensated by the company the last work day preceding the holiday and the first work day following the holiday. This holiday pay was retro-active to May 1, 1954. This agreement did not change Rule 21 (a) or Rule 24. These two rules continued to be applied as outlined above, that is, when a holiday occurred the employe holding a position that included that day as a work day was permitted to work the holiday in accord with Rule 21 (a); and he was compensated at the time and one-

the pro rata for so doing, it would have been a simple matter to have said so in clear and unmistakable language. Such was clearly not the intent.

An examination of the findings and recommendations of Emergency Board No. 106, which was the forerunner of the Agreement of August 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 exparte submission the company has shown that Electricians Schutter, Kyde, et al. were not entitled to work on December 25, 1957 as claimed. Also, the company has shown that neither the fringe benefit agreement nor the rules of the agreement contemplate that management must work an employe on a holiday and 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.

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

The confronting question is the same as was decided in Award No. 3515. There is no difference in the pertinent facts or in the agreement language upon

which the petitioner relies. Award No. 3515 therefore governs the disposition of this case.

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 occurring 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 lateral 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