

Award No. 3557

Docket No. 3053

2-IC-CM-'60

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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly denied Carman J. M. Magee, pay in the amount of eight hours at the time and one-half rate for December 25, 1956, Christmas Day, while he (J. M. Magee) was on vacation.

2. That accordingly the Carrier be ordered to additionally compensate Carman J. M. Magee in the amount of eight hours pay at the time and one-half rate for Christmas Day, December 25, 1956.

EMPLOYEES' STATEMENT OF FACTS: Carman J. M. Magee, hereinafter referred to as the claimant, is employed as such at Jackson, Mississippi by the Illinois Central Railroad, hereinafter referred to as the carrier, and regularly assigned to a position of car inspector in the train yard which works Tuesday and Wednesday 3:00 P.M. to 11:00 P.M.; Thursday, Friday and Saturday 7:00 A.M. to 3:00 P.M. with Sunday and Monday as rest days. The claimant works each and every holiday falling on a work day of his work week except when laying off at his own request or when off on vacation and the same holds true for all other car inspectors at Jackson, Mississippi except those holding position wherein it was stated in the bulletin advertising the position that it would not work on holidays, such as Bulletin No. 18 and No. 19 dated June 28, 1955, copies of which are submitted herewith and identified as Exhibit A.

The position of car inspector held by the claimant is that which was advertised in Bulletin No. 32, copy of which is submitted herewith and identified as Exhibit B, and does not specify that it will not work on holidays as does Bulletins No. 18 and 19.

While the claimant was on his earned vacation from December 11 to December 29, inclusive, which included a holiday, Christmas Day, December 25, 1956, the claimant's regular assignment was filled by a vacation relief employee who worked each and every day of the claimant's regular assignment, including Tuesday, December 25, 1956.

Work on a holiday may or may not be required at the discretion of the Carrier; therefore, any work required is casual or unassigned work (overtime) and cannot be considered as part of the daily compensation paid by the Carrier for such assignment within the meaning of Rule 7(a). See Awards 7294-Third Division and Second Division Awards 2212 and 2302 of the N.R.A.B."

It is the carrier's position that Claimant J. M. Magee received the proper compensation during the period of his assigned vacation. His work week was Tuesday through Saturday and the holiday falling on Tuesday, December 25, 1956, was, for vacation purposes, a work day and a vacation day for which he was paid the regular eight hours of his assignment.

There is nothing in the agreement between the parties to this dispute that supports the employees' request, and this claim 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 of said dispute were given due notice of hearing thereon.

Claimant was regularly assigned as a car inspector at Jackson, Mississippi, Tuesday through Saturday. He was on vacation December 11 through December 29, 1956. Christmas Day fell on Tuesday and claimant's relief man was required to work on that day for which he was paid 20 hours' pay for 8 hours of work. The claimant received 8 hours' pay for that day and seeks an additional 12 hours' pay on the theory that claimant works each and every holiday falling on a work day of his work week. The employees maintain that as the Bulletin advertising the assignment in question did not exclude holiday work, it is implied that holidays are necessarily a part of the assignment. The carrier shows that the claimant's job was not blanked on February 22 or May 30, 1956.

On two prior occasions involving these same parties this Board has held that under the effective agreement the employe does not occupy a position involving a five-day week guarantee, including a week in which a holiday falls on what would have been a work day of his work week. See Awards 1606 and 2520. In Award 1606 this Board rejected the claimant's contention that a bulletining of a position which made no mention that holidays would or would not be worked had the effect of guaranteeing five days of work per week. The award stated:

"We do not think this position is tenable. For us to rule otherwise would be unreasonably to hold that without the kind of bulletining contended for by the Organization, the Carrier has no alternative to working its employes on all holidays at overtime rates of pay. There is no compelling evidence of record that the parties contemplated such a restriction on the carrier's alternatives. To us their agreement means that in respect to working employes on holidays, the carrier has two alternatives. It may work them, or it may not. But if it chooses

the former alternative, it incurs a penalty in the form of paying time and one-half rates for the holiday hours worked."

Article 7(a) of the National Vacation Agreement of December 17, 1941 and its agreed interpretation of June 10, 1942, provide:

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

This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

As noted, work on a holiday may or may not be required at the discretion of the carrier. Accordingly, holiday work in the circumstances of this claim is casual or unassigned work and is not a part of the daily compensation paid by the carrier for the claimant's assignment within the meaning of Article 7(a) quoted above. See Awards Nos. 2212 and 2302. We conclude that the claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Date at Chicago, Illinois, this 29th day of September 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3557

Awards 1606 and 2520, cited by the majority in the findings, do involve the instant parties and agreement but they are not relevant here as the issues therein are not the same as in the present instance. Nor is there any need to discuss the dates of February 22 or May 30, 1956 since they have no bearing on the instant dispute inasmuch as the claimant was not on vacation on those days.

Article 7(a) of the National Vacation Agreement of December 17, 1941 and its agreed interpretation of June 10, 1942, does provide:

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

This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

However the majority's holding that "holiday work in the circumstances of this case is casual or unassigned work" is in error. As stated by the majority "Claimant was regularly assigned as a car inspector at Jackson, Mississippi, Tuesday through Saturday. He was on vacation December 11 through December 29, 1956. Christmas Day fell on Tuesday and claimant's relief man was required to work on that day for which he was paid 20 hours' pay for 8 hours of work." Thus, within the meaning of Article 7(a), the claimant, having a regular assignment, should have been paid the compensation paid by the carrier to the relief man for such assignment while the claimant was on vacation.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink