

Award No. 3763

Docket No. 3535

2-UP-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

UNION PACIFIC RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreements Sheet Metal Workers Raymond H. Scott and L. C. Heinzel at Los Angeles were improperly compensated for services performed as Foremen on Washington's Birthday, February 22, 1958.

2. That accordingly the Carrier be ordered to additionally compensate these employes in the amount of an additional days pay at the Foremen's rate of pay.

EMPLOYEE'S STATEMENT OF FACTS: Raymond H. Scott and L. C. Heinzel hereinafter referred to as the claimants are employed at Los Angeles Shops and are assigned as lead mechanics on a Saturday through Wednesday basis, hours eight A. M. to four P. M.

On Washington's Birthday, February 22, 1958, the claimants were assigned to work as relief foremen and compensated at the daily rate of \$28.92 or on the basis of foremen's straight time pay.

In both cases the claimants involved hold seniority as sheet metal workers only, and do not hold foremen's seniority and were compensated in the amount far less than they would have received had they worked as mechanics or lead mechanics on a holiday.

This dispute has been handled with the carrier, up to and including the highest designated officer with whom claims are to be handled, with the result that he has declined to adjust it.

The agreement effective September 1, 1949 as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that under Rule 34 reading in pertinent part as follows:

"Should an employe be assigned temporarily to fill the position of a foreman he will get the foreman's rate."

"We have considered carefully the emphasis Organization has placed on Article 3(h) of the Agreement. We are convinced, however, that this rule deals with separate and distinct matters pertaining entirely to pay, hours, rest days, seniority, etc., for which they have bargained as yardmasters. Article 3(h) cannot be applied to positions and other situations outside the scope of the Agreement.

This Board is not persuaded that the Agreement can be interpreted in a manner urged by the Organization. We believe the Yardmasters are limited in the amount of pay they will receive for working higher rated positions to the pay of such higher rated positions, whether it be General Yardmaster, Trainmaster or any other temporary assignment they accept." (Emphasis ours)

In Award 2467 (Schedler), this Division was faced with an identical claim and held:

"The claimant relieved the regular assigned foreman from November 22 through November 30, 1954. During this period the claimant was the acting foreman and did the foreman's work. He received foreman's pay. Foremen are not paid for holidays as such. Thanksgiving Day was November 25, 1954. The claimant asserts he should receive holiday pay as a carman for that day. For the entire week, both before and after the holiday, the claimant worked as a foreman and was paid at the foreman's rate of pay. We find nothing in the agreement indicating that a worker upgraded to a foreman's position is entitled to holiday pay."

It is submitted that the claimants were properly compensated for work performed as foremen on February 22, 1958.

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.

In Award 2495, involving precisely the same Carrier, Organization, Rules and circumstances, and one of the same Claimants, it was held by this Division that a sheet metal worker when serving as a foreman on a holiday is entitled under Article II, Section 1, of the National Agreement of August 21, 1954, to a second day's pay at the foreman's rate because that was the position to which on that day he was regularly assigned.

The parties agree that this dispute now involves only the difference between the foreman's rate and the sheet metal worker's rates.

Since the Claimants as pointed out in Award 2495 of this Division, were assigned to and working in the position of foremen and not in sheet metal workers' positions, and under Rule 34 were being paid at the foreman's rate,

it follows that the additional day's pay to which each is entitled is at the foreman's rate.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.