Award No. 5017
Docket No. 4847
2-SLSF-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Car Inspector, P. W. Davis, was improperly compensated under the terms of the current agreement for July 4, 1963, while on vacation.

2. That accordingly, the Carrier be ordered to additionally compensate said Car Inspector in the amount of eight hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The St. Louis-San Francisco Railway Co., hereinafter referred to as the carrier, maintains train yard forces at St. Louis, Missouri twenty-four hours per day, seven days per week. Car inspectors are assigned to each shift each day. These car inspectors always have and still continue to work holidays that fall on a work day of their individual work week.

Since the advent of the national agreement, dated August 21, 1954, all shop craft employes of this carrier, holding an assignment that is filled on holidays, were paid eight hours at the straight time rate plus eight hours at the time and one-half rate while on vacation when such holiday fell on a work day of their assignment. The carrier withheld the eight hours time and one-half rate for July 4, 1963, in this particular case and continues to do so.

Car Inspector, P. W. Davis, hereinafter referred to as the claimant, was assigned to Regular Job Symbol No. 1022 at the Lindenwood Train Yards, 3 P. M. to 11 P. M., work days Tuesday through Saturday, rest days Sunday and Monday. He started on vacation June 18, 1963, for three weeks, including July 4, 1963, and returned to work on July 9, 1963. While on vacation, his job was filled every day by the vacation relief inspector. July 4th, falling on a regular work day of this assignment, the vacation relief worker worked same and was paid eight hours straight time rate plus eight hours time and one-half rate. Claimant Davis only received eight hours straight time for this day, while on vacation.

But where it appeared that claimant's position was regularly worked by him on the holiday it was not casual or unassigned. Awards 2566, 3104."

Similar claims were denied by this Division in Award 3557 (Carey) and Award 3563 (Carey).

Another denial award which involved the situation where the carrier, as here, worked less than its full force on a holiday is Award No. 3866 (H. A. Johnson).

The carrier respectfully submits that the evidence clearly and conclusively establishes that the overtime which the organization claims should have been included in the claimant's 1963 vacation allowance was casual or unassigned overtime and, therefore, not compensable as a part of the vacation allowance. This division is requested to so find.

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 waived right of appearance at hearing thereon.

Claimant was on vacation on July 4th, 1963, which was a regular day of his assignment. He had previously been on sick leave; the carman appointed to fill the temporary vacancy caused by his illness continued to fill the position during Claimant's vacation, and was given holiday pay in addition to time and one-half for working the holiday. However, Claimant was given only the holiday pay. He therefore claims the time and one-half pay for the day, under Article I, Section 3, of the National Agreement of August 21, 1954, and Article 7(a) of the Vacation Agreement and its agreed interpretation. Those provisions are as follows:

Article I, Section 3 of the National Agreement:

"When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

Article 7(a) of the Vacation Agreement and its agreed interpretation:

"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 had he remained

at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

The Carrier's position is that Claimant would not have worked the holiday because of Memorandum of Agreement entered into by the Carrier and the Organization on December 16, 1953, which provides as follows:

"When the carrier determines that less than the usual number of employes in an engine house, shop, plant, car repair or train yard, or in any other facility, will be needed to work on a holiday, the employes to be worked will be selected from the overtime boards in accordance with Rule 11(b) of current agreement."

It says that in accordance with this provision it posted a bulletin stating that at Lindenwood Riptrack, Lindenwood Train Yards, and Ewing Avenue, certain crafts would not work, and that only certain car inspector jobs would work on the day, including Claimant's job No. 1022. That was the reason given on the property for the denial of the claim. The jobs named are numbered 1010 to 1035, which are car inspectors' jobs at the Lindenwood Train Yard, and 3001 to 3006, which are jobs at Ewing Avenue. The jobs at Lindenwood Riptrack are numbered in the 5000 series, and none of them was listed.

The Employes point out that the Memorandum of Agreement of December 16, 1953 relates, not to all the facilities at Lindenwood, but to any one of them; that it says "engine house, shop, plant, car repair or train yard". They state further that the inspectors' positions at the Lindenwood Train Yards listed on the bulletin included all the inspectors' positions there, and that the holiday was actually worked by the employe filling Claimant's position during his vacation, and not by an employe from the overtime board for the Lindenwood Train Yards.

The Carrier does not directly state that less than all the inspectors' positions at the Lindenwood Train Yards were listed in the bulletin for July 4th, but states that it did not list all of them in the Lindenwood Seniority District, and that although a force of car inspectors is maintained in the Lindenwood Train Yards around the clock, seven days per week, "it does not necessarily follow that the same number are used every day".

This showing by the Carrier is insufficient to show that the Memorandum of Agreement of December 16, 1953 became applicable to the Lindenwood Train Yard on July 4th, 1963. Furthermore, that it is not applicable is indicated by the fact that Carrier did not fill Claimant's position on that holiday from the overtime board, but had it filled by the employe who had been filling Claimant's position during his vacation.

The claim must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1967.

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