Award No. 5217
Docket No. 4992
2-SP&S-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen & Oilers)

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY (System Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Carrier improperly compensated Roundhouse Laborer J. A. Heniken, Portland, Oregon for service rendered November 26, 1964.

2. That accordingly, Carrier be ordered to additionally compensate Claimant in the amount of twelve hours at the straight time rate for services rendered November 26, 1964.

EMPLOYES' STATEMENT OF FACTS: Mr. J. A. Heniken, hereinafter referred to as the Claimant, is regularly employed by the Spokane, Portland and Seattle Railway Company, hereinafter referred to as the Carrier, as a Laborer with an assigned work week of Saturday through Wednesday on the third shift with Thursday and Friday as assigned rest days.

Thursday, November 26, 1964, one of the Claimant's assigned rest days, Carrier directed Claimant to report for work on the First Shift (7:30 A. M. to 3:30 P. M.). Claimant complied with the directive of the Carrier by working from 7:30 A. M. until 3:30 P. M., and submitted a claim for eight hours at the time and one-half rate for working on his assigned rest day as provided under Rule 6(b) of the current Agreement, as amended. Claim was also submitted for eight hours at the time and one-half rate for working on the Holiday as provided for under Rule 6(a) of the current Agreement.

Carrier allowed compensation for eight hours at the time and one-half rate for working on the assigned rest day and rejected the claim for eight hours at the time and one-half rate for working on the Holiday (Thanksgiving Day).

This dispute has been handled with all Officers of the Carrier including the highest Officer designated to handle such disputes and all have declined to make a satisfactory settlement.

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.

Thursday, November 26, 1964, was not only Thanksgiving Day, a holiday recognized by the applicable Agreement, but also was Claimant's regularly assigned rest-day. He was required to work eight hours that day and was compensated at the time and one-half rate. The sole issue is whether Claimant is entitled to an additional time and one-half payment for the same eight hours work merely because it was performed on a rest-day as well as a holiday.

Petitioner contends that subparagraphs (a) and (b) of Rule 6 require two separate payments for work performed on a rest-day and a holiday. It is Carrier's position, on the other hand, that Rule 6(a) deals specifically with the situation and provides for only one payment where a holiday and rest-day coincide and that nothing in the Agreement calls for duplicate payments for the same work.

Rule 6 reads as follows:

"Rule 6. (a) Except as otherwise provided in this agreement, work performed on rest days and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above Holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered a holiday) shall be paid at the rate of time and one-half.

(b) Except as otherwise provided in this agreement, work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under Rule 2-2.

Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under Rule 2-2.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

NOTE: The elimination of punitive rates for Sunday as such does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid aherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change."

The very same issue has been considered by the Third Division in a substantial number of cases. See, e.g., Third Division Awards 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 14977, 15000, 15052, 15226, 15340, 15361 and 15376. In those Awards the Third Division upheld claims that did not differ in material respects from the claim now before us. The theory underlying those decisions is that provisions like Rule 6 are, in effect, two separate rules, one requiring time and one-half payment for services performed on a holiday and the other requiring like compensation for services performed on a rest-day.

We understand and are not altogether unsympathetic with Carrier's reasoning to the contrary which is supported by Awards No. 23 of Special Board of Adjustment 564. However, this is not a case of first impression and we are convinced that the rule of stare decisis has much to recommend it. Not only does it put an end to controversy and avoid repitious claims but it helps management as well as organizations to formulate policies and procedure and to rely on crystallized principles. Because of these considerations, a number of well settled principles affecting other situations have been accepted that otherwise might well be upset. The fact that the cited precedents are Third, rather than Second Division cases is of no consequence since it would make for confusion and serve no useful purpose to encourage the several divisions of the Board to apply different principles to the same factual situations.

While, then, we recognize that some of Carrier's contentions are not without merit, we are not prepared to disregard the many awards of the Third Division that have passed upon the issue that is now before us. We do not find the present case distinguishable from the cited line of Third Division Awards and, in accordance with their holdings, will sustain this claim for two separate time and one-half payments for work performed on a holiday that coincides with a rest-day.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

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