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. 156, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

"1. The Long Island Railroad is in violation of the Holiday Agreement.

2. The Long Island Railroad is in violation of the Birthday Agreement dated November 21, 1964 Article No. 2.

Bessie Britt coach cleaner, birthday fell on January 1, 1965, she worked her regular tour of duty at Jamaica, N. Y. Carrier paid her 8 hours at the pro-rata rate and 8 hours at the punitive rate. We claim she should have been compensated as follows:

8 hours at pro rata rate as Birthday 8

8 hours at 1½ time rate for working holiday 12

8 hours at pro rata rate as holiday pay 8

8 hours at 1½ time rate for working on Birthday 12

Therefore, after discussion with supervisor John Jennerjahn on February 3rd, 1965 he agreed to submit a corrected time card whereby Bessie Britt would be paid as follows:

8 hour at pro rata rate as Birthday 8

8 hours at pro rata rate as Holiday 8

8 hours at 1½ time rate for working on Holiday 12

Total of twenty eight hours at straight time:

Therefore, we are hereby claiming an additional eight hours at 1½ time rate for working Bessie Britt on her Birthday."

EMPLOYES' STATEMENT OF FACTS: Coach Cleaner Bessie Britt, hereinafter referred to as the Claimant, is employed at Jamaica, N. Y., by the Long Island Railroad Company, hereinafter called the Carrier.

Election Day, Thanksgiving and Christmas (provided when any of these holidays fall on Sunday the day observed shall be considered the holiday), shall be paid for at the rate of time and one-half with a minimum of two hours and forty minutes at time and one-half."

Article II of the November 21, 1964 Agreement merely expanded the above rule to include the employe's birthday as a holiday. Neither the basic agreement, nor the national agreement, gives the employe the right to claim two penalty days when his birthday-holiday and the recognized holiday coincide and the employe is required to work.

The National Agreement of August 21, 1954, provided that employes would be granted seven holidays and would be allowed eight hours at the pro-rata rate of the position to which assigned if any of these holidays fell during their work week. The Agreement of November 21, 1964, (Article II), gave the employes an additional holiday, i.e., their birthday, and this holiday is treated in the same manner as are the other holidays. The claimant was paid one day at the pro-rata rate for her birthday-holiday, one day at the pro-rata rate for the recognized holiday and one day at the punitive rate for working. It is our position that any other interpretation of the basic holiday rule or the National Agreement providing for the birthday-holiday would be absurd.

In the case at hand, there is only one rule in the basic agreement governing the payment for work performed on any legal holiday. It is coincidental that the claimant's birthday and the recognized holiday fell on the same day, but there is no rule in the scheduled agreement nor in the National Agreement of November 21, 1964, which requires the Carrier to pay two days' pay at the punitive rate.

Under existing rules and practices, penalty payment can only be applied once during a single tour of duty. To make the payment requested by the Brotherhood would be in violation of Rule 4, i.e., ". . . there shall be no overtime on overtime. . . ."

It is interesting to note that the General Chairman has not cited any violation of a Rule in the scheduled Agreement but uses the National Agreement of November 21, 1964, as the basis for his claim. The National Agreement only granted the employes an additional holiday — it did not supersede the provisions of Rules 4 and 5 of the scheduled Agreement in existence on the property.

For reasons set forth herein, there is no basis for this claim, and it should, therefore, be denied.

(Exhibits not reproduced.)

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.

This claim involves a different Carrier and a different Organization from those in Award No. 5237, but provisions of Article II, Section 6 of the National Mediation Agreement of November 21, 1964, identical with provisions of the National Mediation Agreement of February 21, 1964, identical with provisions of the National Mediation Agreement of February 4, 1965, essentially similar rules of the Holiday and current Agreements, and similar facts, Claimant's birthday falling on New Year's day.

Consequently it necessitates the same disposition in accordance with the Third Division and Third Division (Supplemental) Awards cited in the above numbered award of this Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1967.

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