Award No. 5331
Docket No. 5070
2-CRI&P-CM-'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. 6, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the applicable Agreements, the Carrier improperly denied Carman H. C. Marshall six (6) hours' pay at the time and one half rate for February 13, 1965, the claimant's birthday.

(2) That, accordingly, the Carrier be ordered to compensate the aforesaid Carman for six (6) hours' pay for February 13, 1965.

EMPLOYES' STATEMENT OF FACTS: H. C. Marshall, hereinafter referred to as the claimant, holds seniority as a Carman and is employed as such by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, at Fort Worth, Texas.

The claimant is employed on the Repair Track with assigned hours of 8:00 A. M. to 4:30 P. M. with rest days of Saturday and Sunday. The claimant, while off duty on Saturday, one of his assigned rest days and also his birthday, was called in to work and did work as a write up man on the Repair Track from 10:00 A. M. until 4:00 P. M.

The Claimant was paid eight (8) hours' pay at the pro-rata rate for February 13, 1965 account of qualifying for birthday pay and in addition was paid six (6) hours' pay at the time and one half rate account of performing service on his assigned rest days.

The claimant was denied any overtime payment for service performed on his birthday.

This dispute has been handled with the Carrier up to and including the highest officer so designated by the Carrier, with the result that he has declined to adjust it.

This same reasoning was followed in the Findings of Award No. 3 of Special Board of Adjustment No. 603 which involved a similar dispute between the Great Northern Railway and the Transportation-Communication Employes Union rendered on January 13, 1966 with Francis J. Robertson as Chairman of the Special Board. The findings held in part:

> "The rate of time and one-half for work performed because of working through a period which should be allocated to a vacation, working on a holiday, working on a rest day or working in excess of eight hours in a day is a premium rate; the purpose of which is to discourage the Carrier from requiring employes to work at such times. By the mere incidence of a holiday and a day which is treated as a vacation day for bookkeeping purposes coming together, the premium cannot be converted to triple time. And, it must be considered as triple time under the employes' theory since there is no more than eight hours worked and for that time worked they are seeking twenty-four hours' pay. This is more than just pyramiding premiums; for the premium is ½ time, but under the employes' theory there would be added a premium of one and one-half times the basic rate to arrive at twenty-four hours' pay for the eight hours **worked** on the holiday which also happened to be a 'vacation' day. Assuming the correctness of the employes' theory, it would logically follow that if the claimants here had been required to work in excess of eight hours on the dates of claim, they would then be entitled to pay at 4½ times the basic rate for the overtime hours. It is doubtful that any such absurd result was intended by the premium pay rules.
>
> We think it is clear that in the absence of rules showing a clear intent to the contrary (and we are not acquainted with any nor cited to any) that the premiums required for working on a vacation day which also happens to be a holiday were designed to operate on a concurrent non-cumulative or non-consecutive basis and that they were not intended to be pyramided. Consequently the proper payment for the time actually worked by the claimants on December 26, 1960 was **one and one-half time.**"

A copy of Award No. 3 of Special Board of Adjustment No. 603 is attached as Carrier's Exhibit C.

Clearly and unquestionably, this claim is without support and should be denied.

It is hereby affirmed that all of the foregoing has been a matter of correspondence or conference between the parties or available thereto. Oral hearing is not requested unless requested by the Employes in which event Carrier would be represented.

(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.

Claimant worked six hours on February 13, 1965, which was not only his birthday-holiday but also his rest day. For that service he was paid eight hours at the straight-time rate for the birthday-holiday and six hours at time and one-half. He now seeks an additional six hour premium payment on the ground that he worked on a rest day as well as on his birthday.

The claim has been vigorously disputed by Carrier but we find, as we did in Award 5217, that the stare decisis principle is applicable and of compelling force in this case. We find great merit in that principle and believe that it should be evenly and strictly followed.

While the wording, location and form of the controlling rules in this case differ somewhat from those considered by many of the sustaining awards that have passed upon the issue, the obligations created by the agreements and the broad principles applicable to them are substantially the same and we find no justification for avoiding the impact of stare decisis here.

Carrier's contention that the claim must nevertheless fail because of a well established past practice is not persuasive, since it is based on merely a general assertion and not on evidence of specific instances where work was performed on both a holiday and rest day. While the conduct of the parties to an agreement may sometimes be expressive of intention and mutual interpretation, we are not in a valid position to make that determination unless we are referred to specific evidence of a pattern or course of conduct.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1967.

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