

Award No. 5401

Docket No. 5243

2-C&O-SM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Current Agreement, Sheet Metal Worker Harry Inkrot was improperly denied pay in the amount of eight hours at time and one-half rate for April 15, 1965, which was his birthday holiday and also his rest day.
2. That accordingly the Carrier be ordered to additionally compensate employe in the amount of eight hours pay at the time and one-half rate for services rendered on April 15, 1965.

EMPLOYEES' STATEMENT OF FACTS: Harry Inkrot, hereinafter referred to as the claimant, is employed by the Chesapeake & Ohio Railway Company, hereinafter referred to as the Carrier, as a Sheet Metal Worker at Parsons Round House, Columbus, Ohio. Claimant holds a regular assignment as relief Sheet Metal Worker, working first shift, Saturday and Sunday, second shift, Monday and Tuesday, third shift on Wednesday with rest days Thursday and Friday. On April 15, 1965, the Claimant was asked to work his rest day which was also his birthday. Claimant was paid eight hours at straight time rate for Birthday Holiday Pay and eight hours at time and one-half rate for working on his Rest Day. The claimant claimed and was denied additional eight hours pay at time and one-half rate for working his birthday.

This dispute has been handled with all Carrier Officials designated to handle such matters, all of whom refused to adjust the matter satisfactorily.

The Current Agreement effective July 1, 1921 and subsequent dates as indicated and reprinted July 1, 1950, is controlling.

POSITION OF EMPLOYEES: It is the employees' position that the claimant was improperly paid for working on April 15, 1965, which was his birthday and also one of his assigned rest days.

tions should not be summarily overruled. But if the precedents are erroneous and if the reasons for the previous decisions are not clear and meaningful, no useful purpose is served to perpetuate such erroneous decisions. They only continue to pervert the real intent of the parties. When this condition exists, there is no reason why continuity should take precedence over error.

What may be a palpably erroneous decision is a matter of conjecture. This Board, on this property, is of the opinion that Award 10541 and those Awards which followed it, did not adequately consider, and discuss the subject and in that respect reached erroneous conclusions." (Emphasis ours.)

For more than 40 years the Employees have shown that their intent with respect to the applicable rules coincides with that of the Carrier. They cannot now at this late date change their position for the sole purpose of securing a windfall for an employee who, by fortuitous circumstances, was called to work on a rest day which was also his birthday. The doctrine of Award No. 6 of Special Board of Adjustment No. 564 should be adopted here.

The claim is without merit and it should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

(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 employee or employees involved in this dispute are respectively carrier and employee 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 regularly assigned as a relief Sheet Metal Worker on three different shifts from Saturday through Wednesday with rest days on Thursday and Friday. He worked on April 15, 1965, which was both his birthday and rest day. Carrier paid claimant for eight hours at the pro rata rate for his Birthday-Holiday and eight hours at the time and one-half rate for service performed on his rest day. The claimant seeks an additional eight hours pay at the time and one-half rate under the current Agreement rules and Article II of the February 4, 1965 National Mediation Agreement.

Petitioner urges that the applicable rules are found in separate agreements and do not impose a limitation on the number of holidays or rest days that may occur on a single day nor restrict the number of times that an employee may receive the time and one-half rate of pay if by coincidence more than one of these days occur on the same date.

Carrier contends that such duplication of premium pay has never been required in the past and constitutes overtime on overtime. Furthermore, Carrier

insists that numerous Awards of the Third Division of the National Railroad Adjustment Board, concerning the same substantive issue, are inapplicable because they arose under different agreements.

Although we are mindful of the defenses advanced by the Carrier as well as conflicting awards of this Division concerning the basic issue involved in this dispute, we find more persuasive the great majority of awards on this matter which have upheld the contention of the Petitioner as to duplication of payments under separate agreements when work is performed by an employe on a particular day, which coincidentally is both his birthday-holiday and rest day.

In fact, recent awards of this Division have found controlling the numerous Awards of the Third Division under the doctrine of stare decisis. Award 5331 and 5332. Despite some recent awards of this Division which do not accept the majority view expressed in many awards on this subject, we find that the instant claim should be sustained in accordance with the doctrine of stare decisis as the facts and agreements here involved are comparable to those found in such earlier sustaining awards.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1968.