

Award No. 5405

Docket No. 5260

2-D&TSL-CM-'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. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Detroit and Toledo Shore Line Railroad Company violated the current agreement when it denied claim for eight (8) hours pay at the punitive rate for work performed on a holiday, which was also a rest day of the following carmen on the holidays named:

- (a) Howard Clay for January 1, 1965.
- (b) George Trout and Kenneth Dunseth for February 22, 1965.
- (c) Robert Swain for November 26, 1965.

2. That the Carrier be ordered to additionally compensate the aforesaid carmen in the amount of eight (8) hours each at the punitive rate for work performed on named holidays.

EMPLOYEES' STATEMENT OF FACTS: Howard Clay, George Trout, Kenneth Dunseth and Robert Swain, hereinafter referred to as the claimants, are regularly employed as Carmen by the Detroit and Toledo Shore Line Railroad Company, hereinafter referred to as the Carrier, at Lang Yards, Toledo, Ohio.

Claimant Howard Clay had an assigned job on the repair track, with a work week of Saturday through Wednesday, with Thursday and Friday as regularly assigned rest days. Claimant was required to perform work on Friday, January 1, 1965 (New Year's Day), which was one of claimant's regularly assigned rest days.

Claimant George Trout, had an assigned job as a welder on the repair track, with a work week of Tuesday through Saturday, with Sunday and Monday as regularly assigned rest days. Claimant was required to perform work on Monday, February 22, 1965 (Washington's Birthday), which was one of claimant's regularly assigned rest days.

Claimant Kenneth Dunseth, had an assigned job on the repair track, with a work week of Wednesday through Sunday, with Monday and Tuesday as

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.

Four named claimants are regularly employed as Carmen by the Carrier at Lang Yards, Toledo, Ohio. Each worked on a specified holiday in 1965, which also was a regularly assigned rest day. Claimant Howard Clay performed work on Friday, January 1, 1965; Claimants George Trout and Kenneth Dunseth performed work on Monday, February 22, 1965; and Claimant Robert Swain performed work on Thursday, November 26, 1965. For such service on their rest day, each was paid eight (8) hours at the time and one-half rate under the provisions of Rule 5(h) of the Agreement between the parties. The instant claim seeks additional compensation for each claimant in the amount of eight (8) hours at the punitive rate for work performed on a holiday under Rule 4(b) of the Agreement.

Petitioner contends that the pertinent provisions of the Agreement are separate and contain no exceptions which would relieve Carrier from the obligation to compensate claimants for performing service on holidays which are also regularly assigned rest days.

Carrier avers that claimants have been properly compensated under Rule 5 (h) of the Agreement and that Rule 4 (d) excepts service on rest days from application of the holiday pay provisions.

Analysis of Rules 4 (b) and 5 (h) of the Agreement discloses that the provisions of each are separate and distinct. Rule 4 (b) clearly provides that service performed on specified holidays shall be paid for at the time and one-half rate, and Rule 5 (h) provides that employees who work more than five days per week will be paid at the time and one-half rate for work on the sixth or seventh days of their work week with certain exceptions not relevant to the present dispute.

Rule 4 (d) relied on by Carrier, provides as follows :

“(d) Service rendered by employees on assigned rest days shall be paid for under the applicable call rules. This rule shall not apply where days off are being accumulated under Paragraph 3 of Section (g) of Rule 2.”

This language merely provides that service rendered on employees' rest days shall be paid for under the applicable "Call Rules," and does not preclude additional payment under Rule 4 (b) when such Claimant's rest days and holidays occur on the same date.

The fundamental issue involved in this dispute has been resolved by numerous Awards rendered by the Third Division of the National Railroad Adjustment Board. Although the applicable provisions of other Agreements

involved in these earlier disputes differ to some extent from the language of the controlling rules in this case, the basic principles are substantially the same. Awards 10541, 11899, 15450, 15531, 15800 and others. Furthermore, recent Awards of this Division have followed similar awards of the Third Division under the doctrine of stare decisis. Awards 5331 and 5332.

Accordingly, we must conclude that the question of compensation for work on a holiday, which is coincidentally a rest day, has been thoroughly considered by many awards with the same determination in all but a handful of cases which have been cited herein by the Carrier. The record here does not convince us that the great majority of awards are in error or that the majority view should not be applicable in the present case. Hence, we will sustain the claim.

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 1965.