Award No. 5412
Docket No. 5247
2-NYNH&H-FO-'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. 17, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. It is the claim of the employes that the Carrier violated the provisions of Rule #4 of the current agreement when they arbitrarily denied Mr. M. Apicelli compensation at the rate of time and one-half for working Decoration Day, May 31, 1965, which is considered a holiday as per Rule #4.

2. Therefore, Mr. M. Apicelli, employed at the Cos Cob Power Plant, must be compensated for eight hours' pay at the rate of time and one-half for working Decoration Day, May 31, 1965.

EMPLOYES' STATEMENT OF FACTS: Power Plant Employe, M. Apicelli, hereinafter referred to as the Claimant, is regularly employed by the New York, New Haven & Hartford Railroad Company, hereinafter referred to as the Carrier, at its Cos Cob Power Plant, Cos Cob, Connecticut. Claimant is regularly assigned as a laborer with workweek Tuesday through Saturday, rest days Sunday and Monday.

Claimant was called and requested by Carrier to work on Monday, May 31, 1965, which was his rest day and the day observed as a legal holiday, Decoration Day. He was paid eight (8) hours at time and one-half rate for service performed on his rest day, but claims he is entitled to an additional eight (8) hours' pay at time and one-half rate for service performed on a holiday.

The above stated facts are verified by copy of letter dated October 26, 1965, addressed to the Vice General Chairman, G. J. Francisco, by Director of Labor Relations and Personnel J. J. Duffy, attached hereto as Exhibit A.

This dispute has been handled with all officers of Carrier designated to handle such disputes, including Carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

years. Only one penalty payment has been made over the years for any service performed on a rest day which was also a holiday, and no claims have been made for anything more until the instant claim.

While the Employes have not so stated, we believe that they have been prompted to enter such claim because of sustaining Awards in similar circumstances involving another organization and different rules, and probably are acting under the theory that they have nothing to lose.

But a later Award of Third Division, Award No. 14240 (Referee B. E. Perelson), points out the distinction between the rules of the agreement involved in those sustaining awards and rendered a denial award in the case at hand.

We subscribe to that principle and impress upon your honorable Board that the agreement rules with the Firemen and oilers on this Property likewise differ from the rules upon which the decision in Award 10541 was predicated.

For all of the reasons herein stated we respectfully request that the claim be denied.

All of the facts and evidence herein have been affirmatively presented to or are known by the Employes.

Carrier does not request on oral hearing. However, in the event the Employes request hearing, Carrier desires the opportunity to be heard as well.

(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 is regularly employed as a laborer by the Carrier at its Cos Cob power plant, Cos Cob, Connecticut. He was called and worked on Monday, May 31, 1965, which was his regular rest day and also a specified legal holiday under the Agreement between the parties. For such services on his rest day, claimant was paid eight (8) hours at the time and one-half rate provided by Rule 8 (4) of the Agreement. The instant claim seeks additional compensation in the amount of eight (8) hours at the time and one-half rate for work performed on a holiday under Rule 4 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 a recognized holiday, which also is his regularly assigned rest day.

Carrier avers that claimants have been properly compensated under Rule 8 (4) of the Agreement, and that Rule 4 excepts service on rest days from application of the holiday pay provisions. Carrier cites certain proceedings, recommendations and resulting Agreements of Emergency Boards Nos. 66, 106 and 130 in support of its position, which are objected to by petitioner as unadmissable because such data was not considered while this dispute was being handled on the property. Examination of Carrier's submission discloses that the disputed material constitutes excerpts from public records, which are admissable on submission of the dispute to this Board. Awards 4263 and 5393. However, we further find that such recommendations and resulting Agreements of Emergency Boards 66, 106 and 130 have no significant relevance to the substantial issue involved in this case.

Analysis of Rules 4 and 8 (4) of the Agreement reveals that the provisions of each are separate and distinct. The pertinent language found in Rule 4 clearly provides that work performed on specified holidays shall be paid for at the time and one-half rate, and Rule 8 (4) provides that employes called or required to report for service on their assigned rest days will be paid for such service at the established overtime rate found therein.

Carrier relies on the following language found in Rule 4 to support its contention that the pertinent language of the Agreement does not require duplication of payments when an employe's rest day and holiday coincide and said employe is required to work:

> "Service rendered by regular employes on their assigned rest days shall be paid for at time and one-half under Rule 8, paragraph (4)."

This language merely provides the rate to be paid regular employes for services rendered on their assigned rest days under Rule 8, paragraph (4) and does not preclude additional payment under Rule 4 when such employes' rest day and holiday occur on the same date.

Additional support for such conclusion is found in the Carrier's counter proposal of June 14, 1966 to Employes' Section 6 notice served upon Carrier on May 17, 1966:

> **"Prohibition Against Multiple Time and One-Half Payments on Holidays.**
>
> Under no circumstances will an employe be allowed more than one time and one-half payment for service performed by him on any day which is a holiday.
>
> All agreements, rules, regulations, interpretations and practices, however established which conflict with the above shall be eliminated except that any existing rules, regulations, interpretations, or practices considered by the Carrier to be more favorable may be retained."

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.

Although we are mindful of the defenses advanced by the Carrier as well as conflicting awards of this Division concerning the basic issue here involved, 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 similar separate provisions of Agreement, including recent awards involving this particular Carrier. Awards 5393, 5394 and 5395. Accordingly, we find that the instant claim should be sustained as the facts and agreement 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 26th day of April 1968.

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