

Award No. 5413
Docket No. 5246
2-NYNH&H-MA-'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 EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

**THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current Agreement, when it denied claim for eight (8) hours' pay at time and one-half rate in favor of Machinist John J. Corley, Jr., for work performed on a holiday, Friday, December 25, 1964.

2. That the Carrier be ordered to additionally compensate Machinist John J. Corley, Jr., in the amount of eight (8) hours' pay at time and one-half rate for work performed on a holiday, Friday, December 25, 1964.

EMPLOYEES' STATEMENT OF FACTS: Machinist John J. Corley, Jr., hereafter referred to as the Claimant, is regularly employed by the New York, New Haven and Hartford Railroad Company, hereafter referred to as the Carrier, at the Dover Street Engine House, Boston, Massachusetts. Claimant held a regular assignment on the 4:00 P. M. to 12:00 midnight shift, with rest days Thursday and Friday.

Friday, December 25, 1964, Christmas Day, was the Claimant's rest day and the claimant was directed to perform the duties of his regular assignment on that day. A claim was made in the amount of eight (8) hours at time and one-half rate, in favor of claimant, for working on his rest day as provided under Rule 4 of the Agreement. Claim was also made for eight (8) hours at time and one-half rate for working on a legal holiday as provided under Rule 3 of the Agreement.

The Carrier paid the claim for work performed by claimant on his rest day and declined the claim for work performed on a legal holiday.

The above stated facts are verified by copy of letter dated September 30, 1965 addressed to General Chairman J. E. Burns, Jr., by Director of Labor Relations and Personnel J. J. Duffy, attached hereto as Exhibit A.

veloped after they were called and cannot be performed by the regular force in time to avoid delays to train movements."

The testimony of the Employe Representatives before the various Emergency Boards, as indicated above, and the subsequent agreements between the carriers and organizations clearly indicate that there was no intention to pyramid one penalty upon another simply because an employe may perform service on a rest day which incidentally happened to be a holiday.

There has been no difference of opinion between the parties on this property as to the application of these rules for a period of twelve 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 now.

While the Employe have not so stated, we believe that they have been prompted to enter such claims 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 System Federation No. 17 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 claims be denied.

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

Oral hearing is not requested.

(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 his assigned rest day which also was a recognized legal holiday, Christmas Day, on December 25, 1964. The claim is for an additional eight hours pay at the time and one-half rate for performing service on the holiday, which coincidentally was his rest day.

The fundamental issue involved in this claim is the same as that which was considered by this Division in Award No. 5412, although different parties and holidays are involved. Therefore, we find the Findings in Award 5412 controlling in the instant dispute. Accordingly, the claim will be sustained.

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.