

Award No. 5510
Docket No. 5364
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 EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

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

DISPUTE: CLAIM OF EMPLOYEES:

1. It is the claim of the employee that the carrier violated the provisions of Rule No. 4 of the current agreement when they arbitrarily denied J. P. Mutino compensation at the rate of time and one-half for working Thanksgiving Day, November 25, 1965, which is considered a holiday as per Rule No. 4.

2. Therefore, Mr. Mutino, employed at the Cos Cob Power Plant, must be compensated for twelve hours' pay at the rate of time and one-half for working Thanksgiving Day, November 25, 1965.

EMPLOYEES' STATEMENT OF FACTS: Power Plant Employee J. P. Mutino, 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 on the 7 A. M.-3 P. M. shift, with work week Saturday through Wednesday, rest days Thursday and Friday.

Claimant was called and requested by Carrier to work on Thursday, November 25, 1965, which was his rest day and the day observed as a legal holiday, Thanksgiving Day. He was paid twelve (12) hours at time and one-half rate for service performed on his rest day, but claims he is entitled to an additional twelve (12) 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 March 1, 1966, addressed to General Chairman G. J. Francisco by Assistant Vice President-Mechanical, G. A. Clarke, attached as Exhibit A.

of March 19, 1949, as a special rule to provide for the method of payment for service on assigned rest days, and states that such payment will be at time and one-half under Rule 8, Paragraph 4.

The last paragraph of revised Rule 4 further emphasizes the difference between work performed on holidays which fall on work days and service performed on rest days. This is exactly the situation to which Chairman Leighty of the Employees' National Committee, referred when he testified before Emergency Board 130, as stated above, and which we here repeat:

"We have another condition prevailing, which our proposals before this Board would correct. That is that a holiday falls on the rest day of the regularly assigned employee and he is required to work on that day. Now, if it were just an ordinary rest day, he would get time and a half for it under the agreement.

The fact that it is a holiday makes absolutely no difference whatsoever. He still only gets time and a half for working that holiday even though it is in excess of his work day and in excess of the forty hours. . . ."

As we have stated above, there has been no difference of opinion between the parties as to the application of these rules for a period of fifteen 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 Employees 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.

The Third Division of the Adjustment Board has similarly followed the principle of the non-pyramiding of penalty payments in Awards 14921, 14922, 15013 and 15519.

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

(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 was called and worked on Thursday, November 25, 1965, which was his regular rest day and also a specified legal holiday under the Agreement between the parties. The instant claim seeks additional compensation in the amount of twelve (12) hours at the time and one-half rate for work performed on a holiday under Rule 4 of the Agreement.

The fundamental issue involved in this claim is the same as that which was considered by this Division in Award No. 5412. Therefore, we hold 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 16th day of July, 1968.