

Award No. 5543

Docket No. 5315

2-WM-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, J. B. Biller, Machinist at Baltimore, Maryland, has been improperly denied additional compensation in the amount of twelve (12) hours at pro rata rate of pay for Sunday, June 13, 1965.

2. That the carrier be ordered to additionally compensate the aforesaid claimant in the amount of twelve (12) hours at pro rata rate of pay for June 13, 1965.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. B. Biller, hereinafter referred to as the Claimant, holds seniority as a Machinist and is regularly employed as such by the Western Maryland Railway Company, hereinafter referred to as the Carrier, at Baltimore, Maryland.

Claimant was called in to work on his rest day, Sunday, June 13, 1965, on which date the Claimant's birthday also occurred. Claimant was compensated for work performed on June 13, 1965, as follows:

1. Eight (8) hours at the straight time rate as Birthday Holiday compensation as per Article II of the February 4, 1965 Agreement.

2. Eight (8) hours at time and one-half for working his birthday, June 13, 1965 as per Article II Section 6(g) of the February 4, 1965 Agreement.

Claim was filed with proper officer of the Carrier under date of July 30, 1965, contending that Claimant was entitled to additional compensation of eight (8) hours at time and one-half for working his rest day under terms of Rule 6 (2) of the agreement of January 1, 1947 as subsequently amended, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective January 1, 1947 as subsequently amended, including the Agreement of February 4, 1965 controlling.

We restate, that in the instant dispute two separate rules are not involved as Article II, Section 6 (g) of the February 4, 1965 Agreement specifically provides that, "existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday," leaving the rate of pay of time and one-half for service performed in Rule 6 (2) unchanged.

The effect of a sustaining award in the instant dispute would be that of writing a provision in the holiday pay rule which the parties did not choose to do and which goes beyond the authority of the Board.

The carrier respectfully submits that the claimant has been properly compensated for service performed at the rate of time and one-half, and the claim for triple time is not supported by existing rules of the agreement and practices thereunder.

(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.

The facts in this dispute are that Claimant worked on his rest day, Sunday, June 13, 1965, which was also his birthday. Carrier paid him 8 hours at the pro rata rate as Birthday-Holiday pay and 8 hours time and one-half for working on said day.

The question to be determined is whether or not Claimant is entitled to an additional 8 hours pay at time and one-half for working his rest day-birthday.

The Organization contends that there are two distinct separate rules involved in this dispute, namely, Rule 6 (2) of the Agreement covering compensation for services rendered on an employe's rest day, and Article II, Section 6 (g) of the February 4, 1965 Agreement, which covers compensation for services performed by an employe on his birthday.

Rule 6 (2) of the Agreement provides as follows:

"(2) Service performed by an employe on his rest day and the following legal holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half."

Article II, Section 6 (g) of the February 4, 1965 National Agreement, reads as follows:

“(g) Existing rules and practices thereunder governing whether employe works on a holiday and the payment for work performed on holidays shall apply on his birthday.”

The Carrier's position is that there are not two separate rules involved here in, inasmuch as paragraph (g) refers back to the basic agreement and practices thereunder to determine the payment for work performed on a birthday and that Rule is Rule 6 (a); that Claimant is to be paid for work performed on his birthday on the same basis as for work performed on any of the other 7 holidays; that the rules do not provide for double payment; that Rule 6 (5) provides that there shall be no overtime on overtime.

This Board has been confronted with this specific issue on numerous occasions. The overwhelming majority of the awards have held that an employe who works on a rest day which is also his birthday is entitled to be paid twice at overtime rates. As was said in Third Division Award No. 15398 (House), for pay purposes he is treated as being in two separate employment situations.

This Division, in Award Nos. 5331, 5332 (Weston) and Award Nos. 5401, 5402 (Ives), involving a similar issue, sustained the claims on the basis of Stare Decisis.

Inasmuch as we feel that said Awards are not palpably erroneous, we are compelled to sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1968.