



Award No. 5598
Docket No. 5341
2-SCL-CM-'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. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(A) That the Atlantic Coast Line Railroad failed to compensate Carman R. H. Owens, Dothan, Alabama for services performed on October 21, 1965, in accordance with the provisions of Appendix IX, paragraph 11 of the controlling agreement, effective November 11, 1940, as amended. Also Article II, Section 6(a) and Article II, Section 6(g) of the November 20, 1964 Agreement.

(B) That accordingly, the Atlantic Coast Line Railroad be ordered to pay Carman R. H. Owens for an additional twelve (12) hours at pro rata rate, for October 21, 1965.

EMPLOYEES' STATEMENT OF FACTS: Carman R. H. Owens, hereinafter referred to as the Claimant, is employed by the Atlantic Coast Line Railroad, hereinafter referred to as the Carrier, as a Car Inspector at Dothan, Alabama. His 1965 vacation was scheduled to begin October 11 and continue through October 24, 1965; his birthday was October 21st. This date, of course, fell within the scope of his vacation assignment.

The Carrier found it necessary to call the Claimant to work on October 21st. He was paid:

8 hours holiday pay at straight time
8 hours holiday pay at overtime
8 hours vacation pay at straight time

The Employees contend that this is 12 hours at pro rata rate short of what he should have been paid.

This claim has been progressed successively on appeal, as prescribed under the controlling agreement, up to and including the highest designated

Claimant has been overly compensated for October 21, 1965, to the extent of 8 hours at straight time rate, and the claim should be denied.

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 on his scheduled vacation from October 11 to October 25, 1965. His birthday occurred on October 21, 1965. He was paid 8 hours straight time for the vacation day and 8 hours straight time for his birthday in addition to 8 hours at time and one-half rate for working on said vacation day. He is claiming an additional 8 hours at time and one-half rate for working on said birthday holiday.

The Organization's position is that Appendix IX, of paragraph 11 of the November 11, 1940 Agreement as amended, authorizes the payment of the claim as herein claimed; that Article II, Section 6(a) and (g) of the November 21, 1964 Agreement provides for employes who are required to work on their birthday shall be paid time and one-half rate in addition to their regular birthday holiday pay.

Appendix IX, paragraph 11, of the November 11, 1940 Agreement reads:

"... If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

Article II, Section 6(a) and (g) of the November 21, 1964 Agreement provides:

"(a) For regularly assigned employes, if an employe's birthday falls on a work day of the workweek of the individual employe he shall be given the day off with pay; if an employe's birthday falls on other than a work day of the workweek of the individual employe, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any.

(g) 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."

The Carrier's position is that Claimant qualified under Section 6(c) of the November 21, 1964 Agreement and the amount provided in said section was paid to Claimant; that Claimant's birthday was counted as a day of his

vacation as set forth in Section 3, Article I of the August 21, 1954 Agreement, and, inasmuch as Claimant was allowed holiday pay for his birthday, he received the daily compensation for said day to which he was entitled; that Claimant was paid more than he was entitled to inasmuch as Claimant received 40 hours' pay for his work week assignment in addition to the hours worked at time and one-half rate of pay; that Article II of the February 4, 1965 Agreement did not amend that part of Article I, Section 3, of the August 21, 1954 Agreement in regard to: ". . . such day shall be considered as a work day of the period for which the employe is entitled to vacation."; that the birthday holiday is to be treated the same as the other seven recognized holidays when it falls on a work day of a work week of a regularly assigned employe receiving vacation pay; that inasmuch as no overtime was assigned to Claimant's position, any overtime accruing to this position was casual overtime; that Carrier complied with Appendix IX, paragraph 11, of the Agreement when it paid Claimant for all hours worked at time and one-half rate in addition to his vacation pay; that Rule 4-A, paragraph (a) of the Agreement prohibits overtime on overtime.

This claim is analogous to the many claims before this Division and the Third Division concerning a fact situation where Claimant worked on his rest day which also happened to be his birthday, and the vast majority of said awards held that an employe was entitled to be paid time and one-half rate for working on his rest day plus time and one-half rate for working on his birthday in addition to 8 hours' pro rata rate for his birthday or that he was entitled to be paid twice at overtime rates. See this Division Awards 5331, 5332, 5401, 5402 and 5433, where such claims were sustained on the basis of "Stare Decisis." See Third Division Awards 15398, 15440, 15764, 15875, 15892, 16101, 16153, and 16291.

Therefore, inasmuch as we have held that said Awards are not palpably erroneous, and inasmuch as the issue in said Awards above set forth is similar to the issue involved in this dispute, we are compelled to sustain this claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1968.