

**Award No. 5603
Docket No. 5405
2-AT&SF-MA-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the carrier violated the Controlling Agreement when it improperly compensated Machinists J. H. Walls, A. A. York, W. C. Whitney, C. J. Gaches, W. Gaches, C. J. Wilson, R. Wilson, L. Emond, H. C. Beck, R. L. Beach, and Machinist Helper A. Ramirez for service performed for the carrier on May 31, 1965 (Decoration Day), a legal holiday, which was also one of the Claimants' regularly assigned rest days.

2. That the carrier be ordered to additionally compensate above-named Claimants twelve (12) hours each at the pro-rata rate, the equivalent of eight (8) hours at the punitive rate, for work performed on one of their regularly assigned rest days, May 31, 1965.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the carrier) and System Federation No. 97, Railway Employees' Department, AFL-CIO, representing, among others, the International Association of Machinists, parties to this dispute, identified as Shop Crafts' Agreement, effective August 1, 1945 (reprinted January 1, 1957, to include revisions), a copy of which is on file with the Second Division, National Railroad Adjustment Board and is hereby referred to and made part of this dispute.

Machinists J. H. Walls, A. A. York, W. C. Whitney, C. J. Gaches, W. Gaches, C. J. Wilson, R. Wilson, L. Emond, H. C. Beck, R. L. Beach and Machinist Helper A. Ramirez (hereinafter referred to as the claimants) are assigned to the 4 P.M. to 12 Midnight shift at carrier's Argentine Shop, Kansas City, Kansas.

2. Since both parties were fully cognizant of, and in agreement with, the past practice since 1949, which remained unchanged when several subsequent Mediation Agreements were adopted that affected the rest day and holiday rules, such practices are just as enforceable as if they had been expressly authorized by the terms of the instrument itself. (Third Division Award 4104 and others cited.)
3. The Petitioning Brotherhood has shown no proof in their handling on the property that it has been the practice and custom to allow two call payments for the same tour of duty performed on a single day which day is a rest day for the employee and as a coincidence fell on one of the legal holidays. The burden of proof is on the Petitioner. (Third Division Award 8838 and others cited.)
4. The Petitioning Brotherhood is attempting to collect duplicate penalties under two agreement rules in utter disregard of the decisions in repeated Awards of this and other Divisions of the National Railroad Adjustment Board. (Third Division Award 4710 and others cited.)
5. By citing Award 10541 in an attempt to support its claim, the Petitioner in the instant dispute is endeavoring to have this Honorable Board sustain its claim on the basis of rules applicable on another Carrier to another craft, i.e., Telegraphers, as well as relying on the palpably erroneous reasoning of the majority in Award No. 10541, which was also the case in those subsequent cases involving Telegraphers in Awards 10679, 11454, 11899 and 12453, all ignoring the fundamental principles of contract construction.
6. The respondent Carrier in addition to relying on the fact that Rules 6(b), Item 4 of Appendix B, and 7(j) of the current Shop Crafts Agreement do not require two call payments for a single occurrence, as proven by past practice and custom, also cited Award 14240, covering a case and rules essentially similar to those involved herein, which case was denied by the Board.

In conclusion, the respondent Carrier respectfully re-asserts that the Petitioner's claim in the instant dispute is wholly without merit or support under the governing agreement rules and should, for the reasons that have been advanced herein, be either dismissed or denied.

The Carrier is uninformed as to the arguments the Petitioner will advance in its ex parte submission and, accordingly, reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Petitioner's ex parte submission.

All that is contained herein is either known by or has been available to the Petitioner and/or its representatives.

(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 were given due notice of hearing thereon.

Claimants are regularly employed by the Carrier at its Argentine Shop in Kansas City with their rest day assignment for each claimant including Monday, May 31, 1965, which was also a legal holiday.

Each claimant was ordered by the Carrier to work May 31, 1965, and each claimant was compensated twelve (12) hours' pay at the pro-rata rate for service performed on holiday.

Petitioners are seeking additional 8 hours each at time and one-half rate for working on a regularly assigned rest day.

The Carrier contends it has properly compensated the claimants under the controlling agreement rules, and a double payment for a single occurrence would pyramid under two agreement rules, and is not permitted; also payments to the instant claimants is in accord with historic practice.

The issue involved in this dispute has already been considered and resolved by this Division, as well as by the Third Division, of the National Railroad Adjustment Board. The slight difference here from Second Division Awards 5406 and 5412, which dealt with the same holiday, May 31, 1965, is men called to work on this date which also was an assigned rest day was the Carrier's decision to pay for rest day and not holiday pay; here, Carrier contends compensation for holiday and not rest day.

We are mindful of the defenses advanced by the Carrier, as well as conflicting awards of this Division; however, we find more persuasive the greater majority of the awards which have upheld the contention of the claimants. Therefore, we find that the principle of stare decisis does exist here and it is a good rule to follow, as the basic principles and rules are substantially the same as in Awards 5406 and 5412.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1968.

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