



Award No. 5722

Docket No. 5571

2-UP-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(CARMEN)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Union Pacific Railroad Company violated the current agreement when it failed to properly compensate Carman Steve Peknik for service performed on his birthday, July 29, 1966, which was also his rest day.
2. That accordingly the Union Pacific Railroad Company be ordered to additionally compensate Carman Steve Peknik in the amount of eight hours at time and one-half rate of pay for services performed on his birthday-holiday July 29, 1966, which was also his rest day.

EMPLOYEE'S STATEMENT OF FACTS: Carman Steve Peknik, hereinafter referred to as the claimant, is regularly employed by the Union Pacific Railroad Company, hereinafter referred to as the Carrier, and regularly assigned at Kansas City, Kansas, on the first shift, with assigned hours of 7:00 A.M. to 3:00 P.M. and rest days of Thursday and Friday. The claimant was assigned by the Carrier to work the first shift from 7:00 A.M. to 3:00 P.M. on his birthday, Friday, July 29, 1966, which was also the Claimant's rest day. Claimant was compensated for July 29, 1966, as follows:

Eight (8) hours at time and onehalf for working his rest day (Friday) and eight (8) hours straight time birthday-holiday allowance for July 29, 1966, his birthday.

Claim was filed with the proper office of the Carrier under date of August 29, 1966, contending that claimant was entitled to additional compensation of eight (8) hours at the rate of time and one-half for service performed on his birthday holiday, under terms of Article II of the November 21, 1964 agreement, and subsequently handled up to and including the highest officer of the Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

clear intent to the contrary (and we are not acquainted with any nor cited any nor cited to any) that the premiums required for working on a vacation day which also happens to be a holiday were designed to operate on a concurrent non-cumulative or non-consecutive basis and that they were not intended to be pyramided. Consequently the proper payment for the time actually worked by the claimants on December 26 was one and one-half time." (Emphasis supplied.)

It is noteworthy that the Organization has not disputed the Carrier's unequivocal assertion in the handling of this claim on the property (Carrier's Exhibit E) that it has always been the accepted and undisputed practice under the Agreement that an employee who performs service on a day which is both a rest day and a holiday is entitled to only one payment at time and one-half rate. Certainly this long accepted practice precludes any question at this time as to the proper interpretation of agreement provisions with respect to payment for service performed on a holiday.

The Carrier has conclusively shown herein that the Organization's position in this dispute is not supported by the Agreement, and this claim should 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This case discloses that Claimant worked on his birthday which was also on his restday. He was compensated for 8 hours at the time and one-half rate for his restday and 8 hours straight time for his birthday. Claim is made by the Organization on behalf of Claimant for 8 hours at time and one-half for working on his birthday. This Board finds that the overwhelming weight of authority is in support of the claim and we cite Awards Nos. 5331 and 5332 (Weston); 5405 and 5412 (Ives) and Award 5395 by this referee.

Controlling in this dispute, among other facets, is the fact that on June 14, 1966, Carrier served employees with a counter-proposal in response to employees' Section 6 notice served upon Carrier on May 17, 1966. This counter-proposal involved prohibition against multiple time and one-half payments on holidays and this Board has held that by making the counter-proposal, Carrier recognized the measure of payment as claimed. (Awards 5395 and 5412) In Award No. 5405 (Ives), this Board stated:

"The fundamental issue involved in this dispute has been resolved by numerous Awards rendered by the Third Division of

the National Railroad Adjustment Board. Although the applicable provisions of other Agreements involved in these earlier disputes differ to some extent from the language of the controlling rules in this case, the basic principles are substantially the same. Awards 10541, 11899, 15450, 15531, 15800 and others. Furthermore, recent Awards of this Division have followed similar awards of the Third Division under the doctrine of stare decisis. Awards 5331 and 5332.

"Accordingly, we must conclude that the question of compensation for work on a holiday, which is coincidentally a rest day, has been thoroughly considered by many awards with the same determination in all but a handful of cases which have been cited herein by the Carrier. The record here does not convince us that the great majority of awards are in error or that the majority view should not be applicable in the present case. Hence, we will sustain the claim."

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.