



Award No. 5761
Docket No. 5586
2-CMSTP&P-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD CO.

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current Agreement was violated when Carrier failed to properly compensate employee Wayne Mickle for service performed on May 30, 1966 (Decoration Day).
2. That accordingly, the Carrier be ordered to compensate employee Wayne Mickle in the amount of fourteen (14) hours at Carmen's overtime rate.

EMPLOYEES' STATEMENT OF FACTS: Carman Wayne Mickle, hereinafter referred to as the Claimant, is regularly employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, and regularly assigned as a Carman at St. Paul, Minnesota. In addition thereto, Claimant is a regularly assigned member of the St. Paul Wrecking Crew and regularly accompanies the wrecking outfit out on the road in wrecking service.

Claimant was called for wrecking service on May 24, 1966 at 16 Mile Canyon, Montana and was engaged in wrecking service to June 5, 1966. Monday, May 30, 1966, was Claimant's regularly assigned rest day and also a legal holiday, Memorial Day. Claimant, along with the rest of the wrecking crew, was engaged in wrecking service on Monday, May 30th, and performed wrecking service from 6:30 A.M. to 8:30 P.M., a total of fourteen (14) hours' service on said day.

At the completion of the day's work on Monday, May 30, 1966, Claimant made out his time card for twenty-eight (28) hours at the Carman's overtime rate of pay—fourteen (14) hours for service performed on the legal holiday, Decoration Day, and fourteen (14) hours for service performed on his rest day. The Wrecking Foreman, Mr. Rodin, approved the time card and forwarded it to the Car Foreman, Mr. Hamre, for payment. Mr. Hamre called Claimant in and notified him he was only entitled to fourteen (14) hours at the overtime rate and ordered him to change his time card. Claimant changed his time card under protest, and the instant claim for the additional fourteen (14) hours' compensation at overtime rate was filed with the proper officer of the Carrier by letter dated June 30,

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. Our proposal before this Board would correct that."

At this point the Carrier respectfully submits that Mr. Leighty, who testified as quoted above, is an employee of this Carrier, is a formal Local Chairman on this property and is a former General Chairman on this property, therefore, he was and is well aware of the past practice that has existed on this property in connection with the question here in dispute throughout all the years. The Carrier submits that the aforequoted testimony of Mr. Leighty conclusively shows that even after the Holiday Pay Rule became effective in 1954 it continued to be the practice, not only on this property but apparently on other properties as well, to compensate an employee working his rest day, which also happened to be a holiday, with only one time and one-half payment, just as Claimant Mickle was compensated in the instant case.

The Carrier submits that from the above testimony before Emergency Board 130 it is irrefutably evident that the Carrier and Organization representatives were in complete agreement that service performed on a holiday that fell on a rest day had always been paid for on the basis of one day at time and one-half. Mr. Leighty stated that the "Proposal before this Board would correct that", for it would have added an additional pro rata day's pay for the holiday. Emergency Board 130 refused this proposal, and when the Carriers and Non-Operating Organizations negotiated the agreement dated August 19, 1960, no reference was made and, therefore, no change was made in the long-standing practice with respect to pay for service performed on holidays and rest days.

The Carrier submits that it is readily apparent that by the claim they have presented the employees are attempting to secure through the medium of a Board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, 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 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.

Claimant worked 14 hours Memorial Day, Monday, May 30, 1966, which was also one of his regularly assigned rest days. He was paid for 14 hours at the punitive rate. This claim is that he was contractually entitled to 14 hours for holiday work plus 14 hours for working on his rest day all at the punitive rate. For reasons stated in Award No. 5332 we will sustain the claim.

Claim sustained.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.