Award No. 5827
Docket No. 5654
2-HB&T-CM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT OF AFL — CIO
(Carmen)

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling Agreement, the Houston Belt & Terminal Railway Company did not properly compensate Carman N. B. Buford for Independence Day, July 4, 1967.

2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to additionally compensate Carman Buford in the amount of eight (8) hours' pay at the time and one-half rate for Independence Day, July 4, 1967.

EMPLOYES' STATEMENT OF FACTS: Mr. N. B. Buford, hereinafter referred to as the claimant, is employed by the Houston Belt & Terminal Railway Company, hereinafter referred to as the carrier, as a car inspector at Congress Avenue Yard, Houston, Texas, assigned hours 3:00 P.M. to 11:00 P.M., workweek Tuesday through Saturday, rest days Sunday and Monday.

Claimant started his annual three (3) weeks' vacation on Tuesday, June 27, 1967, and while on vacation his job was filled, including Independence Day Holiday, July 4, 1967, by vacation relief Carman B. J. Cates; however, the claimant was not compensated for the Independence Day Holiday in line with Article 7(a) of the agreement of December 17, 1941 (Vacation Agreement). Claimant's job works all holidays and consists of part of his regular assignment throughout the entire year and is not casual or unassigned overtime. To substantiate this fact, the employes direct your Honorable Board's attention to employes' Exhibit "A" attached, which is copy of Carman S. J. Nowak's statement, and to employes' statement of the claimant, Carman N. B. Buford, which clearly sets out the practice of how jobs are worked on a holiday.

The carrier violated the agreement when the claimant was not paid the daily compensation paid by the carrier for such assignment.

This matter has been handled up to and including the highest designated officer of the carrier, who has declined to adjust it.

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 apppearance at hearing thereon.

Claimant began his annual three weeks vacation on Tuesday, June 27, 1967, and while on vacation his job was filled, including Independence Day Holiday, July 4, 1967, by vacation relief Carman Cates. The essence of the claim is that Claimant was not compensated for the July 4th holiday, and alleges this to be a violation of Article 7 (a) of the Agreement of December 17, 1941 (Vacation Agreement). Article 7 (a) reads as follows:

> "(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

The Organization contends that all positions, such as Claimant's, "are worked each holiday by the incumbents thereof and when the holiday falls on a work day of their work week, if the incumbent lays off, the job is filled by another employe". Further arguendo, they state that the agreed to interpretation of Article 7(a) reads:

> "This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignnment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

The Organization avers that this is not casual or unassigned overtime, but is worked by the occupant of the position each holiday or by the vacation relief employe.

The Carrier first argues that the claim is not properly before this Board because of an alleged procedural defect, to wit, that no conference was requested or held within the prescribed period of time. This contention, we find, is at variance with the facts of record. We accordingly dismiss it from our consideration.

The next principal contention of the Carrier is that holiday work can only be classified as casual overtime to be worked or not worked at the direction of the Carrier, whereas the Organization maintains that holidays are part of the Claimant's regular assignment.

Carrier concedes that when their services are needed, Claimant and other employes do work on holidays, but that Carrier has the unilateral right to decide whether an employe takes the day off and this is compensated eight hours pro-rata, or works and compensated time and a half.

Under the facts of record in this case, we agree with the Organization that Claimant's position is occupied on all holidays whether by the incumbent Claimant, or a regular relief man. The contention advanced by the

Carrier that it is casual or unassigned overtime cannot be supported. It is part of the Claimant's regular assignment. This distinguishes this case from others presented to use for consideration. The issue at stake is assigned overtime for which Claimant must be paid under Article 7(a) of the Vacation Agreement and the interpretation agreed to on June 10, 1942. We will 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 16th day of December, 1969.

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