



Award Number 5881

Docket Number 5645

2-PCT-MA-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

PENN CENTRAL TRANSPORTATION COMPANY (PRR)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement by improperly compensating Machinist H. E. Harter, Jr., for March 22, 1965.
2. That the Carrier be required to compensate Machinist H. E. Harter, Jr. for an additional eight (8) hours' pay at the time and one-half rate for March 22, 1965, on account of working his Birthday-Holiday.

EMPLOYEES' STATEMENT OF FACTS: The instant dispute arose at the Carrier's Harrisburg Enginehouse, Harrisburg, Pa., where Claimant held a regular assignment as machinist on the "C" trick, with rest days of Sunday and Monday.

On Monday, March 22, 1965, Claimant worked eight hours and was compensated 8 hours at his overtime rate for work performed on one of his rest days. The day in question also being his Birthday, he was paid an additional eight hours at his straight time rate as compensation for his birthday-holiday.

He was not compensated an additional eight hours at his overtime rate for working his birthday-holiday.

On April 2, 1965, the Local Chairman filed a claim with the Foreman, on behalf of Claimant, requesting an additional eight hours pay at the overtime rate for working the birthday-holiday. A Copy of said claim is herewith submitted as Employees' Exhibit "A".

The Foreman denied the claim on April 9, 1965, and, on April 15, 1965, the Local Chairman rejected the Foreman's decision, and filed an appeal with the Superintendent of Personnel.

The Superintendent of Personnel denied the appeal on May 19, 1965, and, on June 16, 1965, the Local Chairman rejected the Superintendent's decision, and requested that a joint submission be prepared for further handling of the case.

On June 21, 1965, the General Chairman filed an appeal with the Manager of Labor Relations.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between this Carrier and the Railway Employees' Department A. F. of L.—C. I. O. and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Organization in this case would require the Board to disregard the Agreement between the parties, hereinbefore referred to, and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by parties to the applicable Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the Agreement applicable here has not been violated and that the Claimant is not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss or deny the claim of the Organization in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employes involved or to their representatives.

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, a regularly assigned machinist whose rest days were Sunday and Monday, worked eight hours on Monday, March 22, 1965, which was his rest day and his birthday. He was paid eight hours at the straight time rate and eight hours at the overtime rate. The claim is for an additional eight hours at the time and one half rate for his having worked his birthday-holiday.

The applicable contract rules in this dispute are Section 6 (g) of Article II of the Mediation Agreement of February 4, 1965, and paragraph (a) and (b) of Rule 4-A-2 of the basic Agreement. They read as follows:

"(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." (Emphasis added).

"4-A-2 (a) Work performed on the following legal holidays, namely, New Years' Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas or the day observed will be paid for at the overtime rate specified in the Rate Schedule, with a minimum of three (3) hours at pro rata rate for two (2) hours' work or less.

(b) Service rendered by an employe on his assigned rest day, or days, shall be paid for at the overtime rate specified in the Rate Schedule with a minimum of three (3) hours at pro rata rate for two (2) hours' work or less."

The issue of what constitutes proper compensation under the foregoing circumstances and rules has been considered and disposed of by this and other Divisions of the National Railroad Adjustment Board on numerous occasions. The resulting awards are in conflict. Some sustain the claim for payment of an additional eight hours at the time and one-half rate upon the rationale that where there are two separate rules and no qualifying exceptions, two separate payments are in order. (3rd Division Award 15000, Referee Zumas). Others deny such payment on grounds that (a) the parties did not intend under the holiday pay provisions to permit the accumulation of "overtime on overtime" (2nd Division Award No. 5204, Referee Knox) and (b) the holiday and rest day rules merely set the rate of pay for work performed on a day when the holiday and rest day of the employe coincide. (2nd Division Award 5317, Referee Johnson).

Based upon a thorough review of the reasons and findings of all awards cited in this dispute, and having in mind the defenses made by the Carrier, we are persuaded that the position of the Employes here constitutes a sound interpretation of the applicable rules. To hold otherwise would, it appears to us, deprive a covered employe of compensation to which he is entitled as a matter of contractual right merely because of a coincidence, i. e., his birthday and rest day occur on the same day he works.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1970.