

Award No. 5916
Docket No. 5744
2-RDG-EW-70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 109,
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(ELECTRICAL WORKERS)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Electrician Leon Coalson, has been improperly denied the payment of eight (8) hours at punitive time rate for May 30, 1967, (Memorial Day) while on vacation.
2. That accordingly the Carrier be ordered to compensate the aforesaid employe in the amount of eight (8) hours punitive rate for the Holiday May 30, 1967.

EMPLOYEES' STATEMENT OF FACTS: Leon Coalson hereinafter called the claimant is employed as an electrician by the Reading Company hereinafter called the carrier at the carrier's engine house and inspection facility at Erie Avenue, Philadelphia, Pennsylvania.

The claimant is one of two electricians employed on the 3:00 P.M. to 11:00 P.M. shift assigned to a seven day operation. The rest days of the claimant's assignment are Saturday and Sunday and are filled by a regular assigned relief man.

The claimant was on his assigned vacation for one week starting May 29, 1967, and continuing through June 3, 1967. His position was filled by a vacation relief worker by the name of Joseph Burke who worked claimant's position every day Monday through Friday of that week. On Tuesday, May 30, 1967, which is one of the recognized holidays covered by the agreement, relief worker Joseph Burke worked eight hours on the claimant's position. If the claimant had not been on vacation he would have worked his own position on the holiday, May 30, 1967, and would have been paid eight hours in addition to holiday pay at the rate of time and one-half.

Electrician E. R. Hall, whose name appears immediately above the claimant's name, is the other electrician employed on the 3:00 P.M. to 11:00 P.M. shift who is assigned to a seven day position. Electrician Hall worked eight hours on May 30, 1967, on his own position and of course was paid eight hours time and one-half for working that day.

cial notice accordingly. Therefore the work of the claimants' positions on the holiday was casual or unassigned overtime.

This special rule distinguishes the present case from Awards 2566, 3104 and 3766, in which the claimants assignments were regularly assigned and customarily worked on holidays without Carrier's option to determine which were and which were not to work.

Claim denied."

Carrier submits that the brotherhood has failed to meet its burden of proof of showing the work of the claimant's position to have been other than casual or unassigned. Clearly the recommendations of the Presidential Emergency Boards, the applicable agreement rules, and the precedent of Second Division Awards warrant the denial of the instant claim.

For the reasons advanced herein, carrier submits that the instant claim should be denied in its entirety. This claim has been handled by conference and correspondence on the property.

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Under Awards 5434 and 5017 of this division, the effect of Article 7(a) is to give an employe on vacation the daily compensation for such assignment unless it is shown to be casual or unassigned overtime.

It is clear from this record that Claimant held a regularly assigned 7-day position with Saturday and Sunday rest days. It is not disputed by Carrier that had Claimant not been on vacation, he would have worked the holiday (Tuesday, May 30, 1967). Moreover, there is no evidence in the record to indicate that the work in question was casual or unassigned overtime.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1970.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5916

The neutral erred in his statement wherein he stated:

"It is not disputed by Carrier that had Claimant not been on vacation, he would have worked the holiday (Tuesday, May 30, 1967)."

On page 3 of its rebuttal statement Carrier stated:

"The organization further contends that the Carrier has not denied the fact that the claimant would have worked on May 30, 1967 had he not been on vacation. While this contention is denied," (Emphasis supplied)

As pointed out by the Carrier in its submission, rule 6—OVERTIME, HOLIDAY AND REST DAY WORK—of the agreement clearly provides that Carrier is entitled to determine the number of employees to be worked during holidays."

"NOTE: In the application of Rule 6, it is understood and agreed the Carrier has the right to determine the number of employees to be worked on holidays."

In considering a rule similar to Rule 6, whereby the Carrier had the option to determine the number of employees to be worked on holidays (" . . . In the application of amended Rule 3-2, it is understood and agreed the Carrier has the right to determine the number of employees to be worked on holidays"), Referee Johnson in Second Division Award No. 3866 stated:

"Under this special provision the Carrier was not required to have all regularly assigned employees work on the holiday, but had the right to determine the number of employees needed for that day and to give special notice accordingly. Therefore the work of the claimants' positions on the holiday was casual or unassigned overtime.

"This special rule distinguishes the present case from Awards 2566, 3104 and 3766, in which the claimants assignments were regularly assigned and customarily worked on holidays without Carrier's option to determine which were and which were not to work.

"Claim denied."

The above was specifically pointed out to the neutral in discussing the case. We believe the majority erred in this Award.

/s/ H. F. M. BRAIDWOOD

H. F. M. Braidwood

/s/ W. R. HARRIS

W. R. Harris

/s/ P. R. HUMPHREYS

P. R. Humphreys

/s/ J. R. MATHIEU

J. R. Mathieu

/s/ H. S. TANSLEY

H. S. Tansley