



Award No. 6212

Docket No. 6012

2-HB&T-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Houston Belt and Terminal Railway Company did not properly compensate Carman H. E. Overby for Decoration Day, May 30, 1969.

2. That accordingly, the Houston Belt and Terminal Railway Company be ordered to additionally compensate Carman Overby in the amount of eight (8) hours' pay at the time and one-half rate for Decoration Day, May 30, 1969.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. E. Overby, hereinafter referred to as the claimant, is employed by the Houston Belt and Terminal Railway Company, hereinafter referred to as the carrier, as a car inspector at south end of South Yard, Houston, Texas, assigned hours 11:00 P. M. to 7:00 A. M., work week Wednesday through Sunday, rest days Monday and Tuesday.

Claimant started his annual two (2) weeks' vacation on Wednesday, May 21, 1969, and while on vacation his job was filled by vacation relief Carman M. Fields, Jr. (Upgraded Helper), who received eight (8) hours' compensation at the straight time rate for Decoration Day, May 30, 1969, and Carman C. Gandy, Jr., who filled the Claimant's position on the holiday, received eight (8) hours at the punitive rate for working claimant's job on the holiday. The reason carman Gandy was used to fill claimant's job on the holiday instead of upgraded helper Fields is that there is an understanding on this property that set up helpers will not be used to fill holiday work except if there is not sufficient number of carmen mechanics available; therefore, in the instant case since Upgraded Helper Fields was not eligible to work this position on the holiday, carman Gandy was called from the overtime board to fill the job, and to more fully explain, the employees herewith quote letter dated June 9, 1970, addressed to General Chairman of Carmen, Mr. W. H. Smith, and signed by Local Chairman of Carmen, Mr. B. D. Flowers:

employee's regular vacation days. The employees agreed to this, and the language of this agreement is contained in Section IV of the agreement.

On May 31, 1963, another Section 6 notice was served on the Carriers, asking for two additional paid holidays, among other things. Again the parties failed to agree, and another emergency board was appointed. This emergency board recommended one additional paid holiday to be agreed on by the parties. The parties negotiated birthday holiday and added this to the August 21, 1954, holiday agreement as a new Section 6.

In Award 5710 (Ritter) it was stated: ". . . Award 5230 (Weston) was a denial award that considered presidential emergency board 106 and its recommendation that the vacation period not be increased by allowing additional vacation days where holidays fall in the base vacation period and when a holiday falls on what would have been a work day of the employee's regularly assigned work week, such holiday shall be considered as a work day of the period for which he is entitled to vacation. This award also considered emergency board 130, which upheld the doctrine of maintenance of take home pay. This award failed to find any requirement for extra day's pay when a birthday or any other holiday fell within vacation week on a work day of the employee's regular work week and attach particular significance to this point in considering it with interpretations in emergency board reports.

In Award 5251 (Dolnick), this Board sustained a claim on the point involved in this dispute, but failed to take into consideration the recommendations of emergency boards, the agreement as a whole, and the history giving rise to the birthday holiday. * * *

In Award 1514 (Ritter), it was stated that Award 5372 failed to recognize that a birthday occurring on a vacation should be considered in the same manner as other holidays that occur during a vacation. If the doctrine of stare decisis has any meaning, it would certainly overwhelmingly apply in this instance. This Board fails to find that these denial awards are in palpable error, and they will, therefore, be followed. It is the position of this board in the interest of stabilizing the railroad industry to be consistent in its interpretations of contracts, to be otherwise would create chaos in the industry. It is not a board's function to rewrite or add to contracts an agreement entered into between parties to a dispute. The proper place for the submission of the question involved in this dispute is at the negotiation table — not before this Board."

POSITION OF CARRIER: Carrier compensated Carman Overby for eight (8) hours at the pro rata rate for one vacation day, May 30, 1969, and eight (8) hours pro rata rate for one holiday (Decoration Day). This is the proper compensation as provided under the agreements in effect. Your attention is called to the August 21, 1954 and the agreement signed September 2, 1969, that became effective January 1, 1968 and has been quoted in Carrier's Statement of Facts. To sustain the claimant would constitute an enlargement of the written agreements now in effect which the Board has no authority, nor is empowered to do. The argument presented in prosecuting this claim constitutes no new material, and the question has been too well settled to give it further consideration and we respectfully request that claim be denied.

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.

The record shows that the Claimant was paid eight (8) hours' vacation pay, at the pro rata rate, for May 30, 1969 and he was also paid eight (8) hours at the pro rata rate for work performed on that holiday. Since pay for holiday work is at the rate of time and one half, the Claimant should have been so paid for Decoration Day, May 30, 1969. He is, therefore, entitled to an additional four (4) hours' pay at the pro rata rate.

AWARD

Claim is sustained for four (4) hours at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.