Award No. 6270
Docket No. 6076
2-SB-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SOUTH BUFFALO JOINT PROTECTIVE BOARD, AFL-CIO (Carmen)

SOUTH BUFFALO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the rules of the Current Agreement when they improperly compensated Carman Robert Murray for wrecking service performed on Thanksgiving Day, November 27, 1969.

2. That accordingly, the Carrier be ordered to compensate Carman Robert Murray an additional one hour's pay at his straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman Robert Murray, hereinafter referred to as the Claimant, owns a regular assigned relief position, by bid, at the South Buffalo Railway Company, hereinafter referred to as the Carrier, as a Carman in the South Buffalo Yard, Buffalo, New York with work week and hours of service respectfully, as follows; Sunday, Monday and Tuesday — 7:30 A. M. to 3:30 P. M., Wednesday — 7:00 A. M. to 3:00 P. M., Thursday and Friday — rest days, Saturday — 2:30 P. M. to 10:30 P. M.

The Claimant was not scheduled or assigned to work on his rest day, Thursday, Thanksgiving Day, November 27, 1969. The Carrier called the Claimant on his rest day, Thursday, Thanksgiving Day, November 27, 1969 for emergency wrecking service from 12:00 noon to 4:00 P. M. and for this emergency work performed, Claimant was paid, according to Management, four hours at double time and one-quarter and four hours at straight time.

The Claimant was damaged for one hour's pay at pro-rata rate of pay by the Carrier's action by not paying him under the (emergency) Overtime Rule of the Current Agreement.

This dispute has been handled with all Carrier Officers designated to handle such disputes, including the highest officer, all of whom have declined to make satisfactory adjustment. The correspondence exchanged by the parties

The claim is contrary to the language of the Rules, and contrary to the practice under those Rules since their inception. The Carrier therefore submits that this claim should be denied by the Board.

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 held a regular assigned relief position as a Carman in Carrier's South Buffalo Yard, Buffalo, New York. The Claimant was not scheduled to work on his rest day, Thursday, November 27, 1969. This was also the Thanksgiving Day Holiday.

The Claimant was called by Carrier at 12:00 Noon on November 27, 1969 to work with a wrecking crew to rerail a submarine-type ladle car at Bethlehem's blast furnace plant. This emergency work was completed at 4:00 P. M. For the time worked Claimant was paid a total of thirteen hours pay.

The Organization contends that the Claimant was deprived of one hour's pay at pro-rata rate of pay by the Carrier's failure to pay him under the Overtime Rule of the effective Agreement.

The Carrier points out that Rule 8 — Overtime follows the pattern for holiday pay in the steel industry rather than the railroad industry. They further rely upon past practice upon this property. The Carrier states that this practice has been followed in similar instances for a period of fifteen years and acquiesced to by the Organization.

Rule 8 — Overtime reads in part:

> "(a) An employe shall be paid at the rate of one and one-half times his straight time rate of pay for all time worked by him.
>
> (1) In excess of 8 hours in any 24 hour period, provided, however, that the same hours shall not be included in more than one 24 hour period; or
>
> (2) In excess of 40 straight time hours in a work week; or
>
> (3) On any day in a work week after he has worked on 5 previous days in that week; or
>
> (4) On an assigned rest day; except when any such time is worked by the Employe because of moving from one assignment to another.

(b) For all time worked on a holiday as defined in the Holiday Rule, an employe shall be paid at the rate of two and one-fourth times his straight time rate of pay."

* * * * *

"(g) If more than one of the provisions of this Rule shall be applicable to any time worked by an Employe, **he shall be paid for such time at the highest overtime rate** specified in any of such aplicable provisions but he shall not be entitled to additional overtime compensation for such time under any other of such provisions." (Emphasis ours.)

The Carrier relies upon Rule 9 — Holidays which reads in part:

"(b) An eligible Employe who does not work on a holiday shall be paid 8 times the straight time hourly rate of the job to which he is regularly assigned, exclusive of shift and Sunday premiums; provided however, that if an eligible Employe is scheduled to work on any such holiday but fails to report and perform his scheduled or assigned work, he shall become ineligible to be paid for the unworked holiday, unless his failure was because of sickness or because of death in the immediate family (mother, father (including in-laws), children, brother, sister, husband, wife and grandparents) or because of similar good cause."

During the handling on the property the Carrier relied upon the fact that the Claimant was a regular member of the wrecking crew called and did not have the option to accept or refuse the work assignment. The Carrier placed considerable emphasis upon the language "scheduled to work" included in Rule 9.

We do not believe that the Claimant was scheduled to work on the date in question but was called out for emergency work. Sections (a) and (g) of Rule 8 should be applied.

In it's presentation to the Board the Carrier relied upon and cited Awards of this Division where past practice was relied upon. We do not believe that past practice can be used to defeat the clear language of a negotiated Rule.

We will sustain the Claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 22nd day of March, 1972.

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