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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6348
Docket No. 6180
2-BN-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: System Federation No. 7, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

Burlington Northern Inc.

Dispute: Claim of Employes:

1. That the carrier violated the controlling agreement when it improperly compensated Passenger Carman W. Washington, 14th Street Passenger Coach Yard, Chicago, Illinois, for services performed for the carrier on July 4, 1970, a legal holiday, which was also one of the claimant's regularly assigned rest days.

2. That the carrier be ordered to additionally compensate Passenger Carman W. Washington twelve (12) hours at the pro rata rate, the equivalent of eight (8) hours at the punitive rate, for work performed on one of his regularly assigned rest days, July 4, 1970, a legal holiday.

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 claimant is regularly employed by the Carrier as a Carman at its 14th Street Passenger Coach yards, Chicago, Illinois, and at the time of the claim herein was assigned to work on the first shift, Sunday through Thursday with Friday and Saturday rest days. In his work week, which began on June 28, 1970, the Claimant worked seven days, Monday through Saturday, June 28, through July 4, 1970. July 4th was a legal holiday and contractually a paid holiday. It was also the Claimant's second rest day. He was paid for eight hours at his pro-rata rate for holiday pay and double his basic straight time rate for work performed on his second rest day in accordance with the provisions of Article V of the National Agreement of April 24, 1970, which reads:

"ARTICLE V - OVERTIME RATE OF PAY

All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof."

Petitioner contends that Claimant was not properly compensated for work he performed on July 4, 1970 in that he allegedly received no pay for having worked on a contractually provided holiday as required by the National Mediation Agreement (Case No. A-8488) dated September 2, 1969 which reads in part as follows:

"ARTICLE II - HOLIDAYS...

Section 1. Section of Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, is hereby amended to read as follows:

'Section 1. Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours' pay at the pro rate hourly rate for each of the following enumerated holidays...Fourth of July'...

Section 4. Section 5 of Article II of the Agreement of August 21, 1954 and paragraph (g) of Section 6, of Article II of the Agreements of November 21, 1964 and February 4, 1965 (amending Article II of the Agreement of August 21, 1954 to provide for birthday holidays), are hereby amended to read as follows:

'Existing rules and practices hereunder governing whether an employee works on a holiday and the payment for work performed on a holiday are not changed hereby except that under no circumstances will an employee be allowed, in addition to his holiday pay, more than one time and one-half payment for service performed by him on holiday.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time for holidays under specified conditions.

The basic agreement between the parties provides:

"Rule 4. WORK ON REST DAYS AND HOLIDAYS
(a) Except as otherwise provided in this agreement, work performed by an employee on his rest days or on the following legal holidays: New Year's Day, Washington's Birghday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, will be paid for at the rate of time and one-half on the actual minute basis with a minimum of two hours and forty minutes at time and one-half rate."

The Petitioner relies on a host of Awards of this Division and the Third Division of the Board which upheld the view that covered employees are entitled to be paid pursuant to each of the punitive pay provisions of the Agreements, to wit: holiday pay plus pay for hours worked on a holiday at time and one half, and in addition, pay for having worked on his rest day at the premium rate therefor when a holiday and rest day coincide. (Second Division Awards 5217, 5331, 5332, 5393, 5405, 5603; Third Division Awards (10541, 10679, 11454, 11899, 12453, 12471, 14138, 14489, 14528, 15000, 15052, 15144, 15226, 15340, 15361, 15376, 15440, and 15450. The Organization further argues that such limitations, if any, upon this application and interpretation of the Agreements, which might be construed from Article II, Section 4 of the National Mediation Agreement of September 2, 1969, (quoted hereinabove) was nullified by the terms of the National Agreement of April 24, 1970. (also quoted hereinabove).

The Carrier avers that its payment to the Claimant for his work on July 4, 1970 was in full accordance with its obligations under all agreements currently in force. It stresses the particular language of Article II, Section 4 of the 1969 National Mediation Agreement to the effect that "Under no circumstances will an employee be allowed, in addition to his holiday pay, more than one time and one-half payment for services performed by him on a holiday", and that Petitioner's demand herein is flagrantly contrary to this provision.

This is a matter of initial impression. It is apparently the first claim of this type being processed since the agreements of September, 1969 and April, 1970.

We cannot find anything in this record to support the contention that Article V of the April, 1970 Agreement superseded Article II, Section 4 of the September, 1969 Agreement and nullified any of its terms. Each deals with its own topic, conditions and circumstances. Work on a holiday is not necessarily overtime work and is not, therefore, in the same subject area, although both holiday and overtime work call for premium payments under the Agreements and controlling contracts. It would serve no purpose at this late juncture to review the reasons therefore and the evolution of the punitive pay provisions of the contracts. Suffice to say that matters related thereto were raised, discussed and negotiated as separate items and at different times over the years.

To what could the parties have been addressing themselves when they agreed to the language found in Article II, Section 4 of the 1969 Agreement? Under what conditions could an employee be entitled to "more than one time and one-half payment for services performed on a holiday" prior to September, 1969? It is eminently clear that the circumstances, subjects of the Awards cited by the Petitioner, which were under review in the negotiations, resulted in that Agreement. It can only be concluded that pyramiding or multiple payment of premium pay for the same hours of work was eliminated by Article II, Section 4 of the September, 1969 Agreement. It accomplished that which we set forth in Award 5217 (Weston) in which we counselled that the parties "put an end to controversy and avoid repititious claims..." The record herein establishes the uncontroverted fact that the limitation on punitive pay was the "quid pro quo" for the extention of holiday pay for eligible employees when the holiday falls on a day other than when he is regularly scheduled to work, a significant liberalization of Rule 4 of the basic agreement and Article II, Section 1 of the National Agreement of August 21, 1954 which provided premium pay for holidays worked "when such holiday falls on a work day of the work week of the individual employee..".

We are not unmindful that the Claimant gave up one of his rest days and also a holiday when he was called upon and did work on July 4, 1970. In Award 5393 (Ritter) we stated: "This Board is not passing on the question of whether or not a rule or rules are equitable; it is merely interpreting an agreement which must be presumed to have been entered into freely and in good faith. This Board cannot enlarge or restrict such an agreement. If inequities do exist, negotiation tables provide the proper forum for correction, not this Board." It should be noted that in the Award quoted, the Carrier counter-proposal to Employes' Section 6 (Railway Labor Act) Notice of May 17, 1966 was cited to sustain an application for multiple premium pay for work performed on a day when a holiday and rest day coincided.

All of the Awards cited predated the National Mediation Agreement of September 2, 1969. Article II, Section 4 precludes payment of more than one premium pay for work on a holiday. The National Agreement of April 24, 1970, established double time as the appropriate pay for work on the second rest day for employees who worked their regular scheduled work hours and their first rest day prior thereto but does not disturb the limitations of Article II, Section 4 of the 1969 Agreement. The Claimant herein was paid holiday pay for July 4th and the highest premium pay for working that day as provided in the Agreements and therefore was fully and properly compensated by his Employer.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1972.