

Award No. 15440
Docket No. CL-15864

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood (GL 5864) that:

1. The Carrier violated the Clerks' Agreement when it refused to pay Clerk H. Fields Crew Dispatcher at Potomac Yard time and one-half time pay for February 28, 1965, which was his birthday-holiday.
2. Clerk H. Fields shall now be compensated a day's pay at time and one-half for February 28, 1965, his birthday-holiday.

EMPLOYEES' STATEMENT OF FACTS: The Claimant is the regular occupant of a seven day position with assigned rest days of Sunday and Monday of each week. On Sunday, February 28, 1965, claimant was required to perform eight hours' service on his rest day, and Sunday, February 28, 1965, was also his birthday a recognized holiday under the National Agreement of November 20, 1964.

The Carrier allowed the Claimant time and one-half time for working on his assigned rest day and one day's pay at pro rata rate for his birthday-holiday. They failed to allow him time and one-half time for working on his birthday-holiday.

A claim filed on behalf of Clerk H. Fields, by the Local Chairman H. E. Brown, for a day's pay at time and one-half time for February 28, 1965, his birthday-holiday. A conference was held on March 17, 1965, at which time this claim was discussed with Mr. A. F. Butler, Assistant to the Superintendent Mr. T. DeW. Styles of Potomac Yard. On May 4, 1965, Mr. Styles, Superintendent, replied to the Conference and declined the claim. (See Employees' Exhibit (a).)

You will note in this exhibit Mr. Styles, had this to say: "if you can furnish any authoritative decision to the contrary, I will be glad to give the

and holiday rules for more than 25 years. Furthermore, although the parties negotiated the rules, and have lived with them for 25 years, that Referee Phillip G. Sheridan was the only one who really knew what the rules really meant, and that once he had decided what the parties really meant his decision had to be followed forever under the doctrine of stare decisis, makes Award 10541 just as wrong as it could possibly be. It can only be taken as a "windfall" under which the Organizations seem to have gotten a new rule which they admittedly did not have, and which they knew could only be lawfully gained through negotiation.

If the doctrine of stare decisis is followed in the instant case, under the facts and circumstances here involved, it would be a clear miscarriage of justice and a deprivation of the Carrier's property without due process of law. The Railway Labor Act provides a manner in which the Clerks can serve notice of a desire for two days' pay for working a combination holiday-rest day and for the disposition of such a notice, if not settled on the property. Wisely, Congress limited the Adjustment Board's jurisdiction to the interpretation or application of agreements concerning rates of pay, rules or working conditions. Congress did not give the Third Division jurisdiction to decide this case on anything but the rules involved on this particular property, as they have been applied by the parties involved for more than 25 years. The rules involved in Award 10541 and the awards that followed that Award are not part of the agreement on this property, and should not be used as the basis of any award in this dispute. This claim should be accordingly denied.

OPINION OF BOARD: Clerk H. Fields, regular occupant of a seven day position, was called by Carrier to perform eight hours' service on his rest day, Sunday, February 28, 1965. This day was also his birthday. He was paid time and one-half for working on his assigned rest day and one day's pay at the pro rata rate under paragraph (a) of the November 20, 1964 Agreement. Paragraph (g) of the November 1964 Agreement reads as follows:

"(g) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holiday shall apply on his birthday."

We find that Rule 15 which provides payment at the rate of time and one-half is pertinent and is applicable.

Mr. Fields contends that Carrier failed to compensate him properly in accordance with the provisions of Rule 15. He requests a day's pay at time and one-half for February 28, his birthday-holiday.

The issue of whether the holiday pay rule and the rest day rule are both applicable if an employe works on his rest day which falls on a holiday has been considered by this Board in as many as fourteen awards and by two Special Boards of Adjustment. The preponderance of awards have held that Carrier has an obligation to pay for such service under both rules. In the few awards which denied the claims including Special Board of Adjustment 564 (Award No. 23) the reasons given were that allowance of the claim would be payment of overtime on overtime which is contrary to the agreement, that the parties to the agreement did not intend to make duplicate payments for a rest day and holiday occurring coincidentally on the same day, and that the past practice of Carrier has been to pay under one rule, for to do otherwise would give two payments for one day's work.

Rule 9 which provides for payment at time and one-half rates for service on a rest day and Rule 15 which provides for payment at the rate of time and one-half for work performed on holidays are separate and distinct rules included in the agreement to meet either situation, work on rest days or on holidays. The coincidence of a rest day and a holiday occurring on the same day does not invalidate the application of one or the other rule. Neither rule includes a provision which limits payment on the time and one-half basis to only one situation — a rest day or a holiday.

After considering the contention that payment on the basis of both Rules 9 and 15 when a rest day and holiday coincide is overtime on overtime prohibited by Rule 9(d), we find that this overtime provision is not pertinent. This rule states that daily overtime which is work in excess of eight hours in any day is not to be included in computing weekly overtime. Since Claimants did not work in excess of eight hours, there was no basis for computing weekly overtime. Claim is not for overtime but for compensation in accordance with the Holiday Pay Rule and the Rest Day Rule.

Moreover, payment as prescribed by a rule of the agreement is not a penalty nor is payment under two applicable rules for two situations or work in the nature of double penalties. Each rule has its own rate of pay which is in effect when the work situation is met. When both the rest day and holiday fall on the same day compensation should be made in accordance with both rules.

Furthermore, the language of the rules under consideration is clear and unambiguous. For this reason, there is no need to look to the past practice to determine the intent of the parties to help resolve this issue.

For the reasons stated, we hold that the Agreement was violated and claim is sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1967.

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