

Award No. 15749
Docket No. MW-16192

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier failed to properly compensate Track Inspectors V. Holmes, T. Lewis, A. Studeman, J. Toothman, A. Davis, M. Shonwalter, W. Albus, C. Wright and P. Davis for service performed on February 22, 1965. (System Case No. MW-191)

(2) Each claimant named in Part (1) hereof now be allowed an additional eight (8) hours of pay at their respective time and one-half rates for the service performed on February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Each claimant was a regularly assigned, monthly rated, track inspector. Each was regularly assigned to a Tuesday through Saturday work week. Sundays and Mondays were designated rest days. Hence, Monday, February 22, 1965, was a designated rest day. It was also the Washington's Birthday holiday. The claimants were required to work on this holiday and this rest day. For this service they each received 8 hours' pay at their respective time and one-half rates. Each claimant was entitled to receive 8 hours' pay at his time and one-half rate for working on the holiday and an additional 8 hours' pay at his time and one-half rate for working on this rest day.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated June 1, 1956, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Each of the claimants named in this docket is a monthly rated Track Inspector. At the time this claim arose, each had a Tuesday through Saturday workweek with Sunday and Monday as his assigned rest days.

The date of this claim, February 22, 1965, Washington's Birthday, fell on Monday.

Each of the claimants performed eight hours service that day. Each has already been allowed eight hours' pay at the rate of time and one-half for that date.

The only dispute in this docket is the payment due each claimant for the service he performed on February 22, 1965.

Holiday pay, as such, is not involved here inasmuch as each of the claimants had his monthly rate of pay adjusted effective May 1, 1954 to include holiday pay, in accordance with the formula set forth in Section 2(a), Article II "Holidays" of the National Non-operating Agreement of August 21, 1954.

OPINION OF BOARD: Nine track inspectors worked on February 22, 1965, a designated rest day for each of them as well as a recognized holiday.

Each received eight hours' pay at his respective time and one-half rate. Each claims and additional payment of time and one-half pay for working on February 22, 1965.

Employees contend that two payments of time and one-half pay for one days' work are required by the provisions of Rules 33(a), 35(a) and 60 of their Agreement with the Carrier, which Rules are as follows:

"RULE 33. CALLS.

(a) Except as otherwise provided in this agreement employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two (2) hours and forty (40) minutes work or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on minute basis.

Where employees are called before 12 o'clock midnight and their service extends into the next work period, they will be paid at rate of time and one-half for all service performed unless such service continues until they have completed sixteen (16) hours service computed from the starting time of their regular shift the following day, when double time will begin and continue to the starting time of their next regular shift, after which, unless released for at least eight (8) hours' rest, time and one-half will prevail for the next sixteen (16) hours, except that where employees desire to work their regular work period instead of being relieved for rest, such regular work period hours shall be paid for at straight time rate."

"RULE 35

REST DAY OR HOLIDAY WORK

(a) Work performed on rest days and/or the following legal holidays, namely:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

(Provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation, shall be considered a holiday) — shall be paid at the rate of time and one-half with a minimum of two (2) hours and forty (40) minutes as provided in Rule 33."

"RULE 60. MONTHLY POSITIONS

All monthly rates shown in this Article XV are for eight (8) hours per day, five (5) days per week, exclusive of holidays, 169½ hours a month. Overtime as per overtime rules."

The Employees rely upon a line of authority that originated in Award 10541 (Sheridan), extends through Awards 10679 (Moore), 11454 (Miller), 11899 (Hall), 12453 (Sempliner), 12471 (Kane), 13678 (Hutchins), 14138 (Rohman), 14489 (Wolf), 14528 (Perelson), 14977 (Ritter), 14978 (Ritter), 15000 (Zumas), 15052 (Hamilton), 15144 (Hamilton), 15340 (Woody), 15361 (Lynch), 15362 (Lynch), 15376 (Engelstein), 15398 (House), 15440 (Engelstein), and 15450 (Dorsey) and is broken only by Award 14240 (Perelson) and Award 23 of SBA No. 564 (Dolnick).

This Board will not overturn a line-of-authority so firmly established as that which originated in Award 10541. Neither will this Board surrender its judgment to any line of authority unless it applies to the dispute at hand.

The Award 10541 line-of-authority depends upon there being two specific articles in the governing agreement, relative to two specific employment situations, each article binding the Carrier to pay one and one-half rate wages if its terms are met. The concurrence of a holiday and a rest day results in Carrier liability under two separate articles and, hence, triple rate wages.

For two reasons, this Board is not bound by the Award 10541 line-of-authority. First, the instant dispute demands the interpretation of the hours of service and working conditions of a Maintenance of Way Employees' Agreement, insofar as it applies to the rest day-holiday problem at hand. Second, this Agreement differs in an important way from those involved in the Award 10541 line-of-authority awards; it has a single article governing the rate of pay for work on rest days and for work on holidays. While the Employees contend the Agreement has three separate articles providing for time and one-half rate pay for the situation at hand, the Board disagrees. Rule 35(a) alone clearly covers both rest day work pay and holiday work pay. Rule 35(a) does incorporate the terms of Rule 33 (governing the rate of pay for calls) but only to the extent needed to specify that an employee working on his rest day or holiday will receive time and one-half pay for a minimum of two hours

and forty minutes even if he works less than that amount of time. As for Rule 60, cited by the Employes, this Board is unable to see how it applied to the instant dispute.

Not being constrained to submit to the Award 10541 line-of-authority, this Board's task is to interpret the Agreement and ascertain what is the intention of the parties. The pertinent language of Rule 35(a) is as follows:

"Work performed on rest days and/or the following legal holidays
... shall be paid at the rate of time and one-half . . ."

While this language is not entirely clear, the Board must interpret it, for the Board has no past practice of the parties properly before it to indicate how the parties themselves have interpreted this provision over the years.

The Board finds, considering Rule 35(a) as well as the Agreement as a whole, that it was not the intention of the parties to provide for double payments of time and one-half pay for work performed on a rest day coinciding with a holiday. The Board believes that, had the parties intended to provide for triple pay for this or any situation, such extraordinary liability of the Carrier would have been clearly stated. It was not so stated.

As far as the claimants in this dispute are concerned, February 22, 1965 was a rest day for two reasons. But it was only one day, and they were entitled only to one day's pay at time and one-half rates under the provisions of Rule 35(a).

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 Employes involved in this dispute are respectively Carrier and Employes 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.

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