

Award No. 16599
Docket No. MW-17247

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

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

(1) The Carrier did not fully and properly compensate B&B Foreman R. L. Singler and B&B Carpenters P. J. Evans, J. C. Barber, L. E. Snyder, D. O. Snyder and J. E. Richardson for services performed on January 1, 1966. (System File 30-5-140)

(2) B&B Foreman R. L. Singler and B&B Carpenters P. J. Evans, J. C. Barber, L. E. Snyder, D. O. Snyder and J. E. Richardson each be allowed, in addition to payment received, an additional eight (8) hours of pay at their respective time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Each claimant was regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were assigned rest days. Saturday, January 1, 1966, was the New Year's Day Holiday.

On January 1, 1966, the Carrier called and used B&B Foreman R. L. Singler and B&B Carpenters P. J. Evans, J. C. Barber, L. E. Snyder, D. O. Snyder and J. E. Richardson to perform B&B work. Each of these employees worked sixteen (16) hours.

Although each claimant was entitled to pay at his time and one-half rate for working on the holiday and an additional payment at his time and one-half rate for working on his assigned rest day, each claimant received only one such payment.

Copies of the correspondence exchanged in connection with the handling of this dispute on the property are attached here as Employees' Exhibit A.

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.

Copies of correspondence reflecting the subsequent handling of the claim on the property are attached hereto as Carrier's exhibits and are identified as follows:

EXHIBIT B - March 14, - Denial of Claim - B&B Supervisor to General Chairman.

EXHIBIT C - March 28, 1966 - Appeal - General Chairman to Division Engineer.

EXHIBIT D - May 20, 1966 - Denial of Appeal - Division Engineer to General Chairman.

EXHIBIT E - June 28, 1966 - Appeal - General Chairman to Regional Engineer.

EXHIBIT F - July 7, 1966 - Denial of Appeal - Regional Engineer to General Chairman.

EXHIBIT G - August 18, 1966 - Appeal - General Chairman to Director of Personnel.

EXHIBIT H - August 24, 1966 - Acknowledgement of Appeal - Director of Personnel to General Chairman.

EXHIBIT I - October 14, 1966 - Denial of Appeal - Director of Personnel to General Chairman.

EXHIBIT J - March 28, 1967 - Letter - General Chairman to Manager Labor Relations (formerly Director of Personnel).

EXHIBIT K - June 16, 1967 - Affirmation of Denial - Manager Labor Relations to General Chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: Each Claimant was regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were rest days. Saturday, January 1, 1966, being a rest day and the New Year's holiday is the subject of this dispute. Since Claimants were required to work on this day, they, having only been paid at time and a half rate for working their rest day, demand an additional payment at time and a half for holiday pay. In support of their position, they invoke the provisions of Rules 21(a), 22(b) and Rule 23, the pertinent portions of which read:

"RULE 21.

REST DAY AND HOLIDAY WORK

(a) Except as otherwise provided in this agreement, employees who are required to work or are held on duty on their rest days and the following holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, (provided that when any of the above holidays fall on a Sunday, the following day shall be considered the holiday) shall be paid for at the rate of time and one-half for time worked or held on duty, with a minimum of two (2) hours and forty (40) minutes as per Rule 23.

"RULE 22. OVERTIME

(b) . . . Employees worked more than 5 days in a work week shall be paid at overtime rates for service performed on the 6th or 7th days of their work week except where such work is performed by an employee due to moving from one assignment to another, or to or from an extra or furlough list, or where days off are being accumulated under Rule 20(1)."

"RULE 23. CALLS

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of four (4) hours at straight time 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, overtime will be allowed as provided for in this agreement."

The Petitioner in this case cites a long series of Awards beginning with Awards 10541 (Sheridan) wherein double penalty payments were allowed both for rest days and holidays. In Award 10541 and those succeeding awards following its rationale however, there were (2) two separate rules invoked, one for rest days and one for holidays. They are therefore distinguishable from the instant case in that rest days and holidays are covered by one Rule, Rule 21(a) Rest Day and Holiday Work. The language of that Rule clearly states that work performed on rest days and holidays will be paid for at the time and a half rate. The intent of the contracting parties by combining the rest and holiday in one rule and providing for one penalty payment at time and a half is indisputable. Rule 22 is captioned OVERTIME and of course guarantees to the employees the time and a half rate for said work, but there is no language in this rule which would remotely indicate that the contracting parties intended double penalty time for the work involved in this case. Quite the contrary, since this same Rule states that "there shall be no overtime on overtime." We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.

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