



Award No. 17255

Docket No. MW-17846

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NEW YORK, NEW HAVEN AND HARTFORD RAIL-
ROAD COMPANY**

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

- (1) The Carrier violated the Agreement when it made unauthorized and improper deductions (\$28.03) from the wages earned by Mason Foreman S. Giusti in the payroll weeks ending February 25 and March 4, 1967. (Railroad Docket No. 10720).
- (2) Mason Foreman S. Giusti now be reimbursed in the amount of \$28.03 because of the violation referred to in Part (1) of this claim."

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned as mason foreman within the Bridge and Building Department at Boston Massachusetts, with a work week extending from Monday through Friday (Saturdays and Sundays were rest days). His assigned hours were from 8:00 A.M. to 4:30 P.M., which included a thirty minute meal period.

On Monday, December 26, 1966, the day observed by the State and Nation as the Christmas holiday, the claimant was called and required to work from 10:00 A.M. to 6:30 P.M. He was entitled to and was initially compensated for all such service at his time and one-half rate. However, the Carrier later decided that he was only entitled to eight (8) hours of straight time pay for the service he performed during the hours of his regular assignment and two (2) hours of pay at his time and one-half rate for the service he performed thereafter. It, therefore, made deductions from his wages equal to the amount he had been paid for that day in excess thereof.

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 September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant S. Giusti held regular assignment as Mason Foreman at Boston, Massachusetts, with assigned hours from 8:00 A.M. to 4:30 P.M., Monday through Friday.

Christmas Day fell on Sunday in 1966, and was observed on Monday, December 26. On that date Foreman Giusti and his gang were called out for emergency service and they worked from 10:00 A.M. to 6:30 P.M.

For this service Mr. Giusti entered time claim for eight hours at straight time as holiday pay and eight hours at punitive rate for the service performed on that day, and he was so paid.

During a subsequent payroll audit it was discovered that Mr. Giusti had been overpaid and deductions were made in two installments, on the payrolls of the weeks ending February 25 and March 4, 1967 to adjust the payment for December 26 in accordance with the applicable rules of the Agreement.

Claim was entered in Mr. Giusti's favor that he should be reimbursed for all monies which it is alleged were wrongfully deducted. It was also alleged that Carrier violated the Agreement "as Mason Foreman Giusti is entitled to receive pay in accord with Rules 24 and 25 (a) of said Agreement for working at the request of Management on December 26, 1966."

The claim was progressed through the usual avenue of appeals up to and including the undersigned. By mutual agreement the time limits for handling this claim on the property were extended.

Copy of General Chairman Christensen's appeal, dated June 21, 1967, is attached as Carrier's Exhibit "A."

Copy of decision by the undersigned, dated September 11, 1967, is attached as Carrier's Exhibit "B."

Copy of Agreement, effective September 1, 1949, between The New York, New Haven and Hartford Railroad Company and The Employees Represented by The Brotherhood of Maintenance of Way Employees is on file with this Board, together with all supplements and amendments thereto. All of these documents are, by reference, made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, a monthly rated Mason Foreman, was called to work on Monday, December 26, 1966, which was observed as the Christmas Holiday. His regular hours were 8 A.M. to 4:30 P.M. and on the day in question he worked from 10 A.M. to 6:30 P.M.

Claimant entered a time claim for eight hours at straight time as holiday pay and eight hours at punitive rate for the service performed on that day and was so paid.

This monthly rated employee is paid for his holidays by the addition of a certain number of hours to the monthly total and thus through a year's time is compensated for all the recognized holidays. He is paid in this manner while his hourly rated associate is compensated for his holidays as they occur.

Thus, Claimant was in error when he asked eight hours pro rata pay for the holiday. He received this compensation prorated throughout his year's monthly payments.

But because he is a monthly-rated employee, we can not exclude him

from the time-and-one-half rate of pay for the hours he works on such a holiday as we consider here.

We must find that this was a holiday for Claimant and that he should receive time-and-one-half pay for the entire eight hours, as recognized in Rule 26(a).

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated to the extent indicated.

A W A R D

Claim sustained as outlined in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.