



Award Number 17978
Docket Number SG-18369

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — EASTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

On behalf of Signal Maintainer W. B. Harwell, Colorado Division, for payment provided by Article II, Section 10-(a) and (b), and Appendix 3 Section 6-(g) of the current Signalmen's Agreement, as amended for twenty-two and one-half (22 1/2) hours' pay at his pro rata rate for services he performed on December 24, 1967, his birthday-holiday, which was also a rest day. This pay is to be in addition to the thirty and one-half (30 1/2) hours at the pro rata rate which he has received under the provisions of Article II, Section 12-(g) and Appendix 3. (Carrier's File: 132-130-A-3)

EMPLOYEES' STATEMENT OF FACTS: Signal Maintainer W. B. Harwell was called for service at 6:00 P.M., Saturday, December 23, 1967 and was relieved at 3:00 P.M. Sunday December 24, 1967. Sunday December 24, was the rest day for Mr. Harwell as well as his birthday-holiday.

For the services rendered on December 23 and 24, he was paid as follows:

- (a) For service performed from 6:00 P.M. Saturday, December 23 to 12:00 Midnight—Six (6) hours at time and one-half rate.
- (b) For service performed from 12:00 midnight Saturday, December 23 to 3:00 P.M. Sunday December 24,—Fifteen (15) hours at time and one half rate.
- (c) Eight hours holiday pay for his birthday-holiday, December 24.

A claim was filed on behalf of Signal Maintainer Harwell for an additional fifteen (15) hours at time and one-half, for service performed from 12:00 midnight December 23 go 3:00 P.M. December 24, based on Article II, Sections 10 (a), (b), 12 (g), and appendix 3, Section 6 (g) of the current agreement providing for payment of time worked on a rest day and holiday at time and one-half rate.

The applicable provisions of the agreement read as follows:

performed on a rest day which as a coincidence also happens to be a recognized holiday. In fact, such practice has been just the opposite. The acquiescence of this practice and custom, without protest or challenge by the Petitioner, cannot be ignored.

In order that the respondent Carrier show this proof of past practice and custom, there is appended hereto as Carrier's Exhibit "A" a statement showing some twenty-two (22) separate occasions when Signal Maintainers worked one of their assigned rest days, which fell on one of the designated holidays, and for which they were compensated for overtime prescribed in the rest day rule or on the "Call" basis.

The claim in the instant dispute was initially presented to Claimant Harwell's immediate Supervisor, Signal Supervisor F. O. Collins, by wire dated January 12, 1968 and letter of January 18, 1968. That claim and the subsequent exchange of correspondence considered pertinent in the appeal of the claim to succeeding officers of appeal, to and including the highest officer of appeal, Carrier's Assistant to Vice President, Mr. O. M. Ramsey, is reproduced and attached hereto as Carrier's Exhibits "B" through "L".

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was called at 6:00 P.M., Saturday, December 23, 1967, for service to investigate signal trouble in the vicinity of Mile Post 871 on Carrier's Fourth District, Colorado Division. He remained so engaged until 3:00 P.M., Sunday, December 24 at which time he returned to his headquarters and went off duty.

Saturday and Sunday December 23 and 24 were Claimant's rest days; and, Sunday December 24 was also his birthday-holiday. For the work performed on those days Carrier paid Claimant as follows:

- (1) For Saturday December 23, 6:00 P.M. to 12:00 Midnight Claimant was paid for 6 hours at time and one-half for work on his rest day; and
- (2) For Sunday December 24, from 12:01 A.M. to 3:00 P.M. Claimant was paid for 15 hours at time and one-half for work performed on his rest day; and, in addition 8 hours at pro rata rate for his birthday-holiday.

The claim is that Carrier was contractually obligated to pay Claimant, in addition to the above payments, 15 hours at time and one-half for work performed on his birthday-holiday, December 24, 1967.

This is another in the long line of rest day/holiday cases in which the Board has held that where separate provisions of the rules agreements specify the rate of compensation for rest day work and work on a holiday both provisions are applicable and must be complied with — that is to say, the employe shall be paid time and one-half for working on his rest day and also time and one-half for working on his birthday-holiday, in addition to any other compensation he was entitled to for that day — in this case 8 hours at pro rata rate for the holiday.

Carrier argues that Claimant herein was working on December 24 only under one rule — THE CALL RULE, Article II, Section II — therefore, Claimant has been properly compensated for the work he was called to perform on December 23 and 24.

The rules for rate of compensation for time worked on a rest day and for time worked on a holiday are singularly specific, and prevail over the Call Rule. Cf. Award No. 16302 (Perelson).

We find that Claimant was contractually entitled to be compensated at the rate of time and one-half for work performed on his birthday-holiday (December 24, 1967) in addition to the 8 hours of holiday pay at pro rata rate which he received.

Claimant's starting time of his regular assignment being 7:30 A.M. we find that Claimant is contractually entitled to be compensated at the rate of time and one-half for work performed on his birthday-holiday, December 24, from 7:30 A.M. to 3:00 P.M.; and, we shall so award.

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 Carrier violated the Agreement.

A W A R D

Claim sustained to the extent set forth in Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1970.