Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 2533
Docket No. 2470

Referee Jacob Seidenberg

PARTIES TO DISPUTE: Railroad Yardmasters of America

Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that -

Substitute Yardmaster F. S. Vaughan be allowed one day's pay at the appropriate time and one-half rate in addition to a straight time day's pay already received for February 22, 1967 account improper use of another yardmaster when claimant stood to work the Holiday.

OPINION OF BOARD: The narrow issue involved in this claim is the determination of the proper measure of damages for an extra board yardmaster who was run around for a 10:30 PM vacancy on a contractually recognized holiday (February 22, 1968). The claimant had worked a 7:00 AM yard assignment for which he had been allowed eight hours holiday pay and eight hours at time and one half for working on a holiday. Because he was not called for the 10:30 PM yardmaster vacancy, the Carrier paid the claimant eight hours straight time. The claimant maintains that he is contractually entitled to receive eight hours pay at the time and one half rate for this run around.

The Organization stresses that the pay for services performed on a holiday is eight hours at overtime rates. If the claimant had been allowed to perform the service which he was entitled to perform, he would have been compensated at premium rather than straight time rates. The Organization states that, with one exception, this Board has allowed premium, rather than straight time,pay because it is what the claimants would have earned under the relevant contract provisions.

The Carrier denies that there is any merit to the claim. The claimant is contractually entitled to premium pay only when he performs service and not when he does not perform any service. In the latter situation, pro rata rates are the correct and proper payment.

The Carrier further notes that the rationale for paying overtime rates on a holiday is that this affected employe has been inconvenienced by being compelled to work on the holiday, but here the claimant was not subjected to this deprivation. The Carrier adds that the better rule and the one with the greater weight of authority is that an employe must perform work before he is entitled to his paid punitive rates, and that rule should be followed in this case.

The Board must take cognizance that the more recent awards, appear in substantial number, to have adopted the Organization's rationale, namely that the affected employe is contractually entitled to be paid that amount which he would have earned if he had been called to service, but for which service he was not called, only because of the Carrier's inadvertence or error. In the interests of uniformity, the Board concludes that this rationale should now be accepted, and thus sustains the claim.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Muriel L. Humfreville
Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1970.