

Award No. 2284

Docket No. 2246

2-MP-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the applicable agreements the Carrier improperly denied Machinist Jack M. Powell eight (8) hours' pay at the pro rata rate for Decoration Day, May 30 (observed on Monday, May 31) 1954.

2. That, accordingly, the Carrier be ordered to compensate the afore-said Machinist for eight (8) hours' holiday pay for the day observed as Decoration Day, May 31, 1954.

EMPLOYEES' STATEMENT OF FACTS: Jack M. Powell, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a machinist at Osawatomie, Kansas. Claimant, an hourly rated employee, is regularly assigned to a Thursday through Monday work week, rest days Tuesday and Wednesday.

The claimant was assigned vacation dates of May 20, 21, 22, 23, 24, 27, 28, 29, 30 and June 3, 1954, as his vacation period for the year 1954. Falling within the claimant's vacation period was the Decoration Day holiday, celebrated and observed on Monday, May 31, 1954. Claimant was compensated for his vacation period on the basis of ten (10) work days.

After the August 21, 1954 agreement was signed making the holiday pay rule, Article II, Section 1 effective on May 1, 1954, the employees at Osawatomie, Kansas, received the Decoration Day and 4th of July holiday pay in October, 1954. The claimant, however, failed to receive his holiday pay for Decoration Day, and as a consequence thereof turned in Form 7935 (shortage slip) and was advised that he was not entitled to Decoration Day holiday pay as per Master Mechanic P. E. Latsha's letter, dated November 19, 1954.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it, as per the Chief Personnel Officer's letter of July 5, 1955.

The agreement effective July 1, 1936, as it has been subsequently amended, is controlling.

"The rule provides**The facts here**

When, during an employe's vacation period,

any of the seven recognized holidays

falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation.

There can be no doubt that May 31 occurred during claimant's vacation period.

May 31 was the Memorial Day holiday specified in the rule.

This claimant had Thursday through Monday as his regular work days; May 31 fell on Monday.

The rule is clear to the effect the holiday must be considered as a day of vacation."

It is undisputed that Claimant Powell received a vacation of ten (10) working days with pay and that under the provisions of Article I, Section 3 of the agreement of August 21, 1954, the holiday observed on May 31, 1954 must be counted as a day of vacation and paid for as provided by Article II, Sections 1 and 3 of said agreement.

To now additionally compensate claimant in the amount of an 8 hour holiday allowance would result in eleven days vacation with pay while entitled to only ten days vacation with pay.

This dispute should be dismissed because now barred under the provisions of Article V of the agreement of August 21, 1954.

In the alternative, there is no basis for this claim which is contrary to specific provisions of the agreement of August 21, 1954, and it should be denied.

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

The carrier or carriers and the employe or 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.

Claimant is employed as a machinist at Osawatomie, Kansas, and is regularly assigned Thursday through Monday, with Tuesday and Wednesday as rest days. He was assigned an annual vacation of ten (10) days commencing on May 20, 1954 and ending June 3, 1954. May 31, 1954 was observed as a holiday (Decoration Day). It is apparent therefore that claimant received a vacation of ten (10) days in addition to the holiday and his rest days. The claimant contends that he is entitled to eight (8) hours' pay at the pro rata rate for May 31, the holiday. Carrier contends that the holiday was chargeable to claimant's vacation while the organization contends that it was no part of his vacation and should have been paid for under the provisions of the August 21, 1954 Agreement.

It is provided in Article II, Section 1, Agreement of August 21, 1954, as follows:

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the work week of the individual employe: * * * Decoration Day * * *."

It is true that if the holiday had been counted as one of his vacation days, he would not have a valid claim. But when, as here, it was not included as a vacation day, he is entitled to eight (8) hours' pay at the pro rata rate by virtue of the retroactive provision of the rule. Since the rule was made effective May 1, 1954, and claimant had complied with all provisions prerequisite to its payment, he is entitled to eight (8) hours' pay where he has not been paid therefore as a vacation day. Award 2277. An affirmative award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1956.