



Award No. 5219
Docket No. 5009
2-CRI&P-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the terms of the applicable agreements, the Carrier improperly denied Carman T. E. Mach eight (8) hours pay at the time and one half rate of January 1, 1965, the claimant's birthday.

(2) That, accordingly, the Carrier be ordered to compensate the aforesaid Carman for eight (8) hours pay at the time and one half rate for January 1, 1965.

EMPLOYEES' STATEMENT OF FACTS: T. E. Mach, hereinafter referred to as the claimant, was employed by the Chicago, Rock Island and Pacific Railroad Company hereinafter referred to as the Carrier, at Cedar Rapids, Iowa.

The claimant was employed in the Train Yards as a Car Inspector with assigned hours of 11:00 P. M. to 7:00 A. M. with rest days of Wednesday and Thursday.

Friday, January 1, 1965 was a legal holiday, the claimant's birthday and an assigned work day of his work week.

The claimant worked eight hours on January 1, 1965 and was paid eight (8) hours pay at the pro rata rate account of qualifying for New Year's Holiday pay, was paid an additional eight (8) hours pay at the pro rata rate account of qualifying for birthday pay and was paid an additional eight (8) hours pay account of working on his birthday.

The claimant was denied any overtime payment for service performed New Year's Day, a holiday.

This dispute has been handled with the Carrier up to and including the highest officer so designated by the Carrier, with the result that he has declined to adjust it.

worked or not. Rules governing the payment for work performed on such Holidays were not altered at all.

In the Agreement of November 20, 1964, those rules and practices were expressly preserved by Article II, Paragraph (g), reading:

"Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday." (Emphasis ours.)

Those existing Rules and Practices (of at least 18 years standing) were applied here, as stated to the General Chairman in our letter dated May 7, 1965 (Carrier's Exhibit A).

The foregoing has never been refuted at any time. The sole contention of the Organization has been that the November 20, 1964 Agreement somehow created a new rule and practice to provide a different payment. The argument fails because the November 20, 1964 Agreement expressly states it does not. The claim should be denied.

All matter contained herein has been the subject of correspondence or conference between the parties.

Oral hearing is not requested.

(Exhibits not reproduced.)

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was required to work eight hours on New Year's Day 1965, which was not only a holiday but also his birthday. He received eight hours pay for the Holiday, as well as a like amount for his birthday and eight hours pay at the time and one-half rate for working on that day.

Petitioner contends that Claimant is entitled to another payment at the time and one-half rate since he performed work on both his birthday and the Holiday. We disagree. The parties plainly anticipated this specific situation in Article II Section 6(f) of their November 21, 1964, Agreement, which provides that "if an employe's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purpose of this Section."

Claimant did not exercise his option to celebrate his birthday on a date other than New Year's Day and there is no sound basis here for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and the many other awards cited therein that have passed upon precisely the same issue and rules as are now before us, the present claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.