Award No. 5239
Docket No. 5049
2-SLSF-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O.
(Carmen)
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That Car Inspector, P. G. Barbee of Memphis, Tennessee was improperly compensated under the terms of the current agreement for January 1, 1965, which was a legal holiday and also the Claimant's birthday, as another holiday set out in the November 21, 1964 Agreement.

2. That accordingly the Carrier should be ordered to additionally compensate said car inspector in the amount of eight (8) hours at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The St. Louis-San Francisco Railway Company, hereinafter referred to as the Carrier, maintains trainyard forces at the Tennessee Yard, Memphis, Tennessee twenty-four hours per day, seven days per week. Car inspectors are assigned to each shift each day. These car inspectors always have and still continue to work on holidays that fall on a work day of their individual work week. Since the advent of the National Agreement of August 21, 1954, all carmen craft members of the Carrier at Memphis, Tennessee holding an assignment that is filled on holidays were paid eight (8) hours at straight time rate plus eight (8) hours at time and one-half rate when a legal holiday falls within the assignment of their work week. Under the additional amended Agreement of November 21, 1964, the Carrier compensated P. G. Barbee, hereinafter referred to as the Claimant, eight (8) hours' pay for his birthday-holiday, but improperly withheld eight (8) hours at time and one-half rate of pay for the Claimant working on his birthday-holiday and continues to do so. The Carrier does not deny that the Claimant worked on January 1, 1965, which was both a legal holiday and the Claimant's birthday-holiday as shown in paragraph 1 and paragraph 2 of Mr. T. P. Deaton's letter of May 3, 1965, D-4054 (Exhibit A).

This dispute has been handled with the Carrier's officers up to and including the highest officer so designated by the company with the result he has declined to adjust it.

The Agreement effective January 1, 1945, as subsequently amended, including the Agreement of November 21, 1964, are controlling.

under should apply differently to work on one of the recognized holidays which also happens to be the employe's birthday. The fact of the matter is that Section 6 (g) of Carrier's Exhibit "A" specifically provides that 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.

Moreover, under Section 6 (f) of Carrier's Exhibit "A", if an employe's birthday falls on one of the seven recognized holidays, as in this instance, the employe has the option under the rule of selecting a certain other day to be considered as his birthday for the purpose of Section 6. This provision further evidences the intent of the parties not to disturb the existing rules and practices thereunder governing the single payment at time and one-half rate for work performed on recognized holidays.

In Third Division Award 14240 involving claim for duplicate payment for the single-day service rendered, there are apt quotations from Third Division Awards 2436 (Carter), 12367 (Seff) and 13991 (Dolnick) concerning the proposition that the conduct of the parties to a contract is often just as expressive of intention as the written word, and what was said in those awards is equally appropriate here.

In conclusion, the Carrier respectfully submits that there is no reason here for this Division to depart from the conclusions reached in Third Division Award 14240, and this Division is requested to so find.

All data used in support of the Carrier's position have been made available to the claimant or his duly authorized representative and made a part of the particular question in dispute.

Oral hearing is not desired unless requested by the Employes. (Exhibits not requested).

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.

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

This claim involves a different Carrier and a different Organization from those in Award No. 5237, but provisions of Article II, Section 6 of the National Mediation Agreement of November 21, 1964, identical with provisions of the National Mediation Agreement of February 4, 1965, essentially similar rules of the current Agreement, and similar facts, Claimant's birthday falling on New Year's day.

Consequently it necessitates the same disposition in accordance with the Third Division and Third Division (Supplemental) Awards cited in the above numbered award of this Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1967.

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