Award No. 5261
Docket No. 5132
2-NYC-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Firemen & Oilers)

THE NEW YORK CENTRAL RAILROAD, NEW YORK DISTRICT

DISPUTE: CLAIM OF EMPLOYES:

1 — It is the claim of the Employes that the Carrier violated the provisions of the November 21, 1964 Agreement when they failed to pay classified Laborer D. Mark, at Harmon Diesel Locomotive Terminal, time and one-half for working on his birthday, January 1, 1965.

2 — That accordingly classified Laborer D. Mark be compensated at the rate of time and one-half for eight hours pay for his birthday, January 1, 1965.

EMPLOYES' STATEMENT OF FACTS: That Classified Laborer D. Mark, hereinafter referred to as the claimant, is regularly employed by the New York Central Railroad at Harmon Diesel Locomotive Terminal on the 7:55 A. M. to 3:55 P. M. shift. The claimant worked January 1, 1965, which is considered one of the seven legal holidays under Article II of the August 21, 1954 Agreement. The claimant did work the day preceding January 1 and did work the day following January 1.

The claimant received pay at the pro rata rate for the holiday, plus time and one-half for working the holiday. Under the November 21, 1964 Agreement, the claimant was entitled to another holiday; namely, his birthday. The claimant's birthday is January 1 and, as indicated above, he did work this date and fulfilled all of the requirements for holiday pay. In addition to the above compensation, the claimant received an extra day's pay at the straight time rate for his birthday.

The dispute was handled with Carrier Officials designated to handle such affairs who all declined to adjust the matter.

POSITION OF EMPLOYES: It is the contention of the Employes that Article II, Section 6, paragraph (g) of the November 21, 1964 Agreement is

Rule 6(a) specifically states the payment for service performed is "at the rate of time and one-half." Since only 8 hours of service was performed, the claim if allowed, would be modifying the rule to provide for payment at triple-time rate. This your Board has held, is beyond its authority.

In Special Board of Adjustment No. 603, Francis J. Robertson the Neutral Member stated in Findings:

> "By the mere incidence of a holiday and a day which is treated as a vacation day for bookkeeping purposes coming together, the permission cannot be converted to triple time."

The aforementioned National Agreements do not intend that such a penalty payment be imposed on the Carrier as triple-time for service performed as Section 5, Article II of the August 21, 1954 Agreement and Section (g), Article II, of the November 21, 1964 Agreement stipulates that payment for work performed on holidays is governed by existing rules and practices. The existing rule in the instant dispute is Rule 6(a).

CONCLUSION: Carrier has shown that Claimant was properly paid for work performed on his birthday holiday for January 1, 1965. It has also shown that the Working Agreement between the parties and the National Agreements do not support the claim for an additional day's pay at time and one-half rate.

The Carrier submits the claim is without merit and should be denied.

All facts and arguments presented herein have been made known to the Employes either orally or by correspondence in the handling of the claim on the property.

An oral hearing is requested; unless after reviewing Employes Submission, Carrier decides to waive hearing.

(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 were given due notice of hearing thereon.

Claimant was required to work eight hours on January 1, 1965 (New Year's Day), 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 situa-

tion 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 purposes of this Section."

Claimant did not exercise his option to celebrate his birthday on a date other than January 1, 1965 (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 13th day of October 1967.

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