



Award No. 5819

Docket No. 5652

2-N&W-MA- '69

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Machinists)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the current agreement, carrier improperly denied Machinist G. W. Freshour birthday holiday compensation for his birthday, July 27, 1966, which fell during his assigned vacation period.
2. That accordingly, the carrier be ordered to compensate the aforesaid employe eight (8) hours at the straight time rate as birthday holiday compensation.
3. That accordingly, the carrier be ordered to additionally compensate the aforesaid employe interest on the full amount of claim at the rate of 6% per year computed to the time of payment of claim.

EMPLOYEES' STATEMENT OF FACTS: The aforesaid employe, hereinafter referred to as the claimant, is regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, as a machinist at Brewster, Ohio.

Claimant's birthday fell on a vacation day of his vacation period for which he was paid a day's vacation pay. However, carrier failed to allow his birthday holiday compensation.

Claim was filed with the proper officer of the carrier contending that claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday holiday, in addition to vacation pay received for that day plus interest, and was subsequently handled up to and including the highest officer of the carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant eight (8) hours' birthday holiday compensation for his birthday holiday, in addition to vacation pay allowed for that day.

Carrier would particularly like to call to the Board's attention Second Division Awards 5230, 5231, 5233, 5310, 5311, 5328, 5329, 5330, 5414, 5415, 5416, 5417, 5418, 5419, 5420, 5422, 5442, 5443, 5444, 5445, 5446, 5447, 5448, 5449 and 5450. Also see Third Division Awards 9640, 9641 and Fourth Division Award 2169. These were identical claims to the one here being considered and in all cases the claims were denied. Carrier will not burden the record by quoting these awards, but a careful reading will reveal that the position is fully denied.

Even if there was merit to this claim, and there is not, under no rule, practice, understanding or otherwise would 6% interest be justified.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The facts and principal issue presented in this case are identical to those in Award Number 5818, with the exception that Claimant is requesting 6% interest per annum on the full amount of the claim computed to the time of payment of the claim. For the reasons stated in that award, we will sustain paragraphs 1 and 2 of the claim to the effect that Carrier will compensate the Claimant for 8 hours at the straight time rate as birthday holiday compensation. We can find no basis for the 6% interest and accordingly will deny paragraph 3 of the instant claim.

A W A R D

Paragraphs 1 and 2 — sustained.

Paragraph 3 — denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.