

Award No. 6288

Docket No. 6131

2-MP-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Car Inspector A. T. Zajac, North Little Rock, Arkansas, the right to work his regular assignment on Tuesday, May 5, 1970.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Car Inspector Zajac in the amount of eight (8) hours at the punitive rate for May 5, 1970, and in addition to the money amount claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector A. T. Zajac, hereinafter referred to as the Claimant is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, at North Little Rock, Arkansas, and is assigned by bulletin to Train Yard Job #20, Sunday through Thursday, rest days Friday and Saturday, assigned hours 3:00 P. M. to 11:00 P. M.

The Claimant's birthday occurred on Tuesday, May 5, 1970, and he was instructed by bulletin not to report for work on this date account it being his birthday holiday. However, the Carrier found it necessary to fill this position on this date (May 5, 1970) and Car Inspector C. Patrick who is regularly assigned by bulletin to Train Yard Job "T" that of relieving car inspectors on Jobs #15 and #55, work week Sunday through Thursday, rest days Friday and Saturday, assigned hours 3:00 P. M. to 11:00 P. M., was moved from his regularly assigned job to fill the Claimant's job on this date and to substantiate this fact the Employees wish to quote Local Chairman, Mr. T. S. Daniels' letter of May 19, 1970, addressed to Master Mechanic, Mr. J. W. Dent, which is herewith attached as Employees' Exhibit "A:"

Similar claims were denied by your Board in Awards 5424, 5534, 5539 and 5639. The Organization in those Awards failed to prove that an employe had a right to work his own assignment on the seven recognized holidays and the same is true here. As previously stated, men are selected to work on the seven recognized holidays for a rotating overtime board and not by reason of their regular assignment. (See Award 5948 for an exception where employes were selected for holiday work on the basis of a seniority overtime board.)

Claimant does not have a right under the Note to Rule 5 to work his own assignment on the seven recognized holidays and does not have such a right on his birthday holiday. The force was handled in the same manner on Claimant's birthday holiday as the force is handled on the seven recognized for the claim for eight hours at the time and one-half rate and that claim for hte claim for eight hours at the time and one-half rate and that claim should be denied. In addition, there is no basis for the claim for interest, in any event, since there is no provision in the Collective Bargaining Agreement for such payment.

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 observe his birthday holiday and carrier had the right to blank his job for that day. However, the claimant's job was not blanked when another man was assigned to work in his place. Claimant had a prior right to work.

In Second Division N.R.A.B. Award 6113 (Simons), a complete explanation has been set forth in order to dispose of this issue so that the contract may be administered in the future without delay to claimants' rights in these circumstances. Stability in labor relations is desirable and will be encouraged by following clearly established precedents where the facts are not disputed. See also Second Division N.R.A.B. Award No. 6254 (McGovern).

The claim for interest is denied because no agreement or rule has been submitted to support this; see Second Division Awards 2657, 5467 and Third Division Awards 18785, 18805, 18857 and others.

AWARD

Claim sustained only to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1972.

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