

Award No. 5218
Docket No. 4975
2-NP-FO-'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. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carrier improperly compensated Roundhouse Laborer Arthur Perfetti, Staples, Minnesota, for services rendered January 1, 1965.
2. That accordingly, Carrier be ordered to additionally compensate claimant in the amount of 12 hours at the straight time rate for services rendered January 1, 1965.

EMPLOYEES' STATEMENT OF FACTS: Mr. Arthur Perfetti, hereinafter referred to as the Claimant, entered the service of the Northern Pacific Railway Company, hereinafter referred to as the Carrier, December 7, 1940 in the Carrier's roundhouse at Staples, Minnesota, and has been continuously employed as a laborer since that date. Mr. Perfetti has a regular assignment, Monday through Friday on the Second Shift, with Saturday and Sunday rest days. Friday, January 1, 1965 was a work day of the work week of the Claimant, and in accordance with agreement provisions for filling positions on holidays, Claimant was instructed by Roundhouse Foreman O. A. Swanson to work.

January 1st is the birthday of the Claimant, and in addition, is one of the seven designated holidays under Agreement Rule No. 12 (a). For services performed on January 1, 1965 Mr. Perfetti was paid eight hours at the rate of time and one-half. In addition, he was allowed eight hours' holiday pay under provisions of Article II of the Agreement of August 21, 1954, as amended by Article III of the Agreement of August 19, 1960, and was also allowed eight hours' Birthday pay under the provisions of Article II of the Agreement of November 21, 1964.

Under date of February 20, 1965 Mr. Perfetti submitted claim for payment of an additional eight hours at the time and one-half rate, for services rendered on January 1, 1965, which has been denied by the Carrier.

than to desire to declare the meaning the words of the agreement made plain. We perceive no ambiguity here." Award No. 2467 — Third Division.

"The problem with which we are here dealing is peculiarly a matter of contract between the organization and the carrier. We do not find the terms of the contract indefinite, uncertain or ambiguous; on the contrary, these are clear and positive. It follows that any change of policy must be brought about by negotiation. It is not within our jurisdiction to make contracts for the parties." Award No. 2612 — Third Division.

"It is axiomatic that this Board will not make Agreements for the parties; nor will it unmake them." Award No. 4126 — Third Division.

"While it is necessary to have a meeting of the minds of the parties to have a valid contract, the provisions of the contract are reduced to writing to witness what the parties then intended. If there be no ambiguity in their written contract, neither party will be heard to say later that such a contract was not intended." Award No. 4172 — Third Division.

The Carrier has shown that Section 6(g) of the August 21, 1954 Agreement, as amended by the August 19, 1960 Agreement and as further amended by the November 21, 1964 Agreement and Rules 12(a) and 14 of the March 1, 1953 Firemen and Oilers' Agreement, provide for a single payment for work performed on a holiday-birthday occurring within an employee's work week. Mr. Perfetti was allowed payment of a single payment of eight hours computed at time and one-half rate for work performed on January 1, 1965, the holiday-birthday occurring within his assigned work week, which payment was in accordance with Section 6(g) of the August 21, 1954 Agreement as amended and Rules 12(a) and 14 of the March 1, 1953 Firemen and Oilers' Agreement. Consequently, the claim presented in behalf of Mr. Perfetti for payment of an additional eight hours at time and one-half rate on January 1, 1965 is not sustained by either the Section 6(g) of the August 21, 1954 Agreement as subsequently amended and Rules 12(a) and 14 of the March 1, 1953 Firemen and Oilers' Agreement. This claim should therefore be denied.

All data in support of the Carrier's position in connection with this claim have been presented to the duly authorized representative of the employees and is made a part of the particular question in dispute.

Oral hearing is desired.

(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 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 were given due notice of hearing thereon.

Claimant was required to work on January 1, 1965, which was not only a holiday but also his birthday. Under applicable rules, he received eight hours' pay for the holiday as well as eight hours' pay for his birthday and eight hours' pay at the time and one-half rate for his work on the holiday.

Petitioner claims that he should have received an additional amount equal to eight hours' pay at time and one-half rate since the work also was performed on his birthday. Petitioner's theory is that there are two separate and distinct rules, one for holidays and the other for birthdays, which require Carrier to pay time and one-half for work performed on those days.

The parties anticipated that a birthday and holiday might coincide and expressly provided for that situation in Article II, Section 6(f) of the November 21, 1964 National Agreement as follows:

"(f) An employe working at a location away from his residence may, by giving reasonable notice to his supervisor, have the day immediately preceding the first day during which he is not scheduled to work following his birthday considered as his birthday for the purposes of this Section. An employe whose birthday falls on February 29, may, on other than leap years, by giving reasonable notice to his supervisor, have February 28 or the day immediately preceding the first day during which he is not scheduled to work following February 28 considered as his birthday for the purposes of this Section. 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."

Under that provision, Claimant had the right to select a day other than the New Year Holiday for his birthday off. He failed to exercise that clear option and should not be entitled to duplicate payments for the same work. In line with the weight of authority that has considered this question we will deny the claim. See Third Division Awards 14921, 14922, 15013 and 15401; cf. Second Division Award 5217 and those cited therein which relate to work on holidays that are also rest days and do not concern contractual commitments similar to Section 6 (f) of Article II.

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.

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