

Award No. 5220

Docket No. 5064

2-SP(PL)-CM-'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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1 - That the Southern Pacific Company violated Article 2, Section 6, paragraph (G) of the November 21, 1964 Agreement.

2 - That accordingly the Southern Pacific Company compensate Carman E. D. Wankier an additional eight (8) hours at the rate of time and one-half for having been required to work on his birthday, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman, E. D. Wankier, hereinafter referred to as the claimant, had been assigned as carman, Taylor Diesel Facility, Air Room, Los Angeles, California, 3 P. M. to 11 P. M., with a work-week Sunday to Thursday, rest days being Friday and Saturday. On Monday, February 22, 1965, a legal holiday and the claimant's birthday, the claimant was required to work his regular assignment for which he was compensated eight (8) hours at the straight time rate of pay and eight (8) hours at the time and one-half rate of pay for having been required to work a legal holiday. In addition thereto, claimant was compensated eight (8) hours at straight time rate of pay, for having been required to work on his birthday. The claimant's claim for an additional eight (8) hours at the rate of time and one-half, for having been required to work on his birthday was denied.

There is no dispute here as to the qualifying requirements set forth in Article 2 of the aforementioned agreement, as the claimant rendered compensated service on February 21, 1965, Sunday, and Tuesday, February 23, 1965, the day before and the day after his birthday.

This dispute has been handled with the Carrier's officers designated to handle such matters, in compliance with the agreement, all of whom have refused or declined to make satisfactory settlement.

performed on recognized holidays, and any interpretation to that effect in the absence of specific language in the rule would constitute a unilateral unauthorized change in the existing agreement contrary to required procedures necessary under the Railway Labor Act.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

All data herein have been presented to the duly authorized representative of the employees and are made a part of this particular question in dispute.

Carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the Petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Petitioner in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

Carrier does not desire oral hearing unless requested by Petitioner.

(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 waived right of appearance at hearing thereon.

Claimant was required to work on February 22, 1965, which was not only a holiday but also his birthday. He received eight hours' pay for the holiday, a like amount for his birthday and eight hours' pay at time and one-half for working on the holiday. The point at issue is whether or not he is entitled under Article II Section 6 of the National Agreement executed on November 21, 1964, to another time and one-half payment for the aforementioned work since it also was performed on his birthday.

The Board has previously considered and discussed the same issue in Award 5218 and the many other awards cited therein and for the reasons stated in that award we will deny this claim.

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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