

Award No. 5221
Docket No. 5083
2-SP(PL)-MA-'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 (Machinists)

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

That in accordance with the applicable Agreements and provisions thereof the Carrier be ordered to additionally compensate Machinist William J. Bott (hereinafter referred to as claimant), in the amount of eight (8) hours at the time and one-half rate for service rendered on February 22, 1965 — Washington's Birthday, a legal holiday — which was also claimant's birthday, a holiday consistent with provisions of the Agreement dated February 4, 1965.

EMPLOYEES' STATEMENT OF FACTS: Claimant is a regularly assigned Machinist at Carrier's Ogden Diesel Shop, with a bulletin assigned workweek of Monday through Friday, including holidays, with rest days of Saturday and Sunday, as evidenced by Employees' Exhibits A and B.

Claimant worked his regular assigned position on Monday, February 22, 1965, the Washington's Birthday legal holiday, which was also claimant's birthday.

The record discloses that Carrier accepted the fact that two (2) bona-fide holidays — Washington's Birthday, a legal holiday, and claimant's Birthday Holiday — had occurred on February 22, 1965, consistent with claimant's assigned workweek, in that claimant received eight (8) hours compensation at the pro rata rate for each of the two (2) holidays involved — Washington's Birthday and claimant's Birthday Holiday. He was also compensated at the time and one-half rate for work performed on the Washington's Birthday holiday, but was denied the additional payment of eight (8) hours compensation at time and one-half rate for service rendered on his Birthday Holiday, which he was contractually entitled to receive under applicable provisions of Article II, Section 6, of the Agreement dated February 4, 1965.

at pro rata rate for the birthday and 8 hours at pro rata rate for the recognized holiday.

The Agreement of February 4, 1965 will be searched in vain for specific wording to so provide. On the contrary, the agreement specifies under Article II, Section 6(g), that the determination of whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday. Said agreement merely provides for an arbitrary allowance of 8 hours at pro rata rate to qualified employees for their birthdays which was not allowed prior to the year 1965, and for continuation of the same payment applied under previous rules and practices for work performed on holidays.

There is no rule that states that an additional payment of 8 hours at penalty rate is to be allowed separate and apart from payments for work 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.

February 22, 1965, was Claimant's birthday as well as a holiday. He received as his compensation for that day eight hours' pay for the holiday, a like amount for his birthday and, since he was required to work that day, eight hours' pay at the time and one-half rate. It is Petitioner's position that under Article II Section 6(a) of the February 4, 1965, Agreement, Claimant is entitled to an additional eight hours' pay at time and one-half for that same work since it was performed not only on a holiday but on a birthday as well.

We have had occasion to consider the same question and similar agreement provisions in Award 5218 that cites and is based on a long line of consistent Third Division Awards. What we had to say in Award 5218 is equally applicable here. There is nothing in Article II Section 6 nor in the letter of understanding of February 4, 1965 (that concerns birthdays occurring between January 1 and February 15, 1965 and was not before us in Award 5218) that guarantees or calls for the payment of time and one-half twice for the same work merely because it is performed on a day that is both the employee's holiday and birthday. Cf. Third Division Awards 15398 and 15440 which concern not holidays but rest days that coincide with birthdays; the two situations have been treated differently by the Awards.

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.