



Award No. 5247
Docket No. 5107
2-PULL-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the agreement of March 2, 1965, Electricians Charles Ranger and George Larkin were improperly denied an additional eight (8) hours pay at straight time rate for their Birthday which occurred while they were on their scheduled vacation.

2. That accordingly, the carrier be ordered to additionally compensate Electricians Charles Ranger and George Larkin, each for eight (8) hours at straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Electricians Charles Ranger and George Larkin hereinafter referred to as the claimants, were regularly employed by the Pullman Company, hereinafter referred to as the carrier, and regularly assigned as Electricians in Carrier's Sunnyside Yard, Long Island City, New York. Claimants took their 1965 vacations January 4, 1965 to January 24, 1965 inclusive and February 21, 1965 to March 6, 1965 inclusive, respectively. Claimant Ranger's birthday was Wednesday, January 20th and Claimant Larkin's birthday was Sunday, February 21st, a vacation day of their vacation period for which they were paid a day's vacation pay. However, Carrier failed to allow them birthday holiday compensation for their birthdays.

Claim was filed with proper officer of the Carrier under date of May 6, 1965, contending that claimants were entitled to eight (8) hours birthday holiday compensation for their birthdays January 20th and February 21st, respectively, in addition to vacation pay received for that day and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective July 1, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow claimants eight (8) hours birthday

Obviously, if the Organization believed it already had won the principle of considering a holiday falling on a workday within the work week of one of its members who is on vacation as other than a vacation day, the Organization would not be serving such a demand at this time.

CONCLUSION: The Pullman Company has shown in this submission that the claim is improperly before the Board account failure of the Organization to observe the time limits governing such matters and, further, that the instant claim is entirely lacking in Agreement or other support. The Company requests that the claim be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employees or to their representative and made a part of this dispute.

Oral hearing is not requested.

(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 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.

On May 6, 1965 the Employees presented the following claim to the Carrier:

"A claim for Birthday Holiday pay for the electricians Charles Ranger, Time Card No. 122, and George Larkin, Time Card No. 191 for pay due these men as provided for under Article II, Section 5(A) and (B) of the agreement, signed March 2, 1965, and in particular that part which reads:

'In addition to any other pay to which he is otherwise entitled to for that day, if any.'"

The claim was denied by the Carrier's highest appeal officer for, among other reasons, the following:

"I have carefully considered all the facts and circumstances involved in this case and find that the claim is not properly before me, in that the Organization has failed to comply with the provisions of Rule 51 when claim was not filed within the required 60 day period."

Rule 51 provides that an employe must file his claim "within 60 days from the date of the alleged unjust treatment or alleged rule violation * * *" Claimant's birthdays, for which compensation is requested, occurred on January 20, and February 21, 1965. The agreement providing for the employees' birthdays

as paid holidays was signed by the parties on March 2, 1965. The claim was not filed until May 6, 1965, 65 days after the agreement was signed.

Employes contend that neither the Claimants nor the Local Committee were aware of the March 2nd Agreement until later, "so is was impossible for any of the employes covered by the Agreement to know what they were entitled to under the Agreement until furnished with a copy of same." They also state that it was necessary to give the Carrier a reasonable time to meet its obligations.

Neither contention is valid. Neither may explain away or excuse the specific obligation provided for in Rule 51. Employes had sixty (60) days after March 2, 1965 to file the claim. Having failed to do so within the time limits, the claim is not properly before the Board.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.