

Award No. 5254
Docket No. 5124
2-SP(PL)-MA-'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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1 — That Machinists M. F. Gable and D. H. Hood (hereinafter referred to as claimants) were improperly compensated under applicable terms of current controlling agreements while on vacation.

2 — That accordingly, the Carrier be ordered to additionally compensate Claimants in the amount of eight (8) hours pay at the pro rata rate, Claimant M. F. Gable for the date of June 22, 1965, and Claimant D. H. Hood for the date of July 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Claimants are regularly assigned at Carrier's Sacramento General Shops, with a bulletin assigned workweek of Monday thru Friday, with rest days of Saturday and Sunday.

Claimants were on their scheduled vacations on the dates of June 22, 1965 and July 22, 1965, respectively, which dates were workdays of their bulletin assigned workweek, also claimants birthdays.

While claimants were on their scheduled vacations their positions were filled every day of their assignments' workweek, and the employees filling the assignments were paid eight (8) hours at straight time rate while so used.

The record discloses that while on vacation claimants were compensated eight (8) hours at pro rata rate for the dates June 22, 1965 and July 22, 1965, respectively, as a day of their scheduled vacation, but were denied an "additional day's pay" for their Birthday Holiday falling on said dates, as contemplated under applicable provisions of Article II, Section 6 of the Agreement of February 4, 1965.

This dispute has been handled up to and with the highest Carrier Officer designated to handle such matters, with the result no adjustment can be effected on the property.

shall be extended accordingly, and the employee shall be entitled to his holiday pay for such day."

(Article III, referred to above, includes "Employee's Birthday".)

The proposal quoted above seeks to secure the same additional pay for Claimant that Petitioner seeks in the instant claim, proving beyond any doubt that existing Agreement rules do not provide for said payment and that Petitioner is fully aware of the fact. Any other determination places Petitioner in the pointless position of seeking something already possessed.

The subject new proposal clearly shows Petitioner is now properly seeking an agreement change in the manner contemplated by the Railway Labor Act, while at the same time is asking this Division to furnish sustaining award prior to the adoption by negotiation of the new rule which the Division, of course, is not empowered to do.

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, M. F. Gable, was on vacation from June 14 to July 2, 1965. His birthday was on June 22, 1965. Claimant, D. H. Hood was on vacation from July 9 to July 23, 1965, inclusive. His birthday was on July 22, 1965. Each Claimant was paid eight (8) hours for each day of his vacation, including June 22, 1965 and July 22, 1965, respectively. An employee's birthday is a paid holiday. Employees are requesting an additional eight (8) hours pay for each of the Claimants.

The same issue is fully discussed in Award No. 5251. The principles and conclusions adopted in Award No. 5251 are affirmed.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5254

The majority's decision to sustain the claim presented in Award No. 5254 is based on the principles and conclusions stated in its finding in Award No. 521. Accordingly, our dissent to Award No. 521 is equally applicable to Award No. 5254 and is hereby adopted as such.

C. L. Melberg

F. P. Butler

H. F. M. Braidwood

H. K. Hagerman

P. R. Humphreys

LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NOS. 5251, 5252, 5253, 5254, 5255, 5256, 5257 AND 5258

A dissent which merely expresses the chagrin of the dissenters is of little value. The dissent of the Carrier Members to Award Nos. 5251 through 5258 is such a dissent.

The dissent does nothing but review the arguments presented to the Division which were considered and disposed of in the findings of Award No. 5251.

The findings in Award No. 5251 and the Labor Members' dissents to Award Nos. 5230, 5231, 5232, 5233, 5310 and 5311 point out all of the reasons that Award Nos. 5230, 5231, 5232, 5233, 5310, 5311, 5328, 5329 and 5330 are palpably erroneous. Therefore, Award Nos. 5251, 5252, 5253, 5354, 5255, 5256, 5257 and 5258 should dispose of this issue.

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