

Award No. 5255

Docket No. 5126

2-MP-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2 RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1.—That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964 when they declined to pay birthday holiday pay to the following employes on the dates listed next to their names:

NAME	OCCUPATION	DATE OF BIRTHDAY
E. F. Kubli	Carman	Monday, June 7, 1965
George LeBegue	Carman	Tuesday, June 8, 1965
C. F. Gault	Carman	Monday, June 14, 1965
Ben Clevenger	Car Helper	Tuesday, June 15, 1965
J. M. Steele	Carman	Wednesday, June 16, 1965
C. T. Moore	Carman	Monday, June 21, 1965
L. F. James	Painter	Wednesday, June 23, 1965

2.—That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate each of the above named employes in the amount of eight (8) hours each at the pro rata rate for their birthday holiday pay.

EMPLOYEES' STATEMENT OF FACTS: Carmen E. F. Kubli, George LeBegue, C. F. Gault, J. M. Steele, C. T. Moore, Painter L. F. James and Carman Helper Ben Clevenger, hereinafter referred to as Claimants, were regularly employed by the Missouri Pacific Railroad Co., hereinafter referred to as the Carrier, in its Sedalia, Missouri Car Shop with workweek of Monday through Friday, rest days Saturday and Sunday.

Group Vacation for 1965 was given to the employes at Sedalia commencing Monday, June 7, 1965 and extending through Friday, July 2, 1965. Claimants were on vacation during said period and their birthdays occurred on a vacation day of their vacation period, as set forth above in Part 1 of the Employees' Statement of Claim. Each of Claimants was paid a day's vacation pay for the

A—If the birthday falls on a work day during the vacation period, it is to be considered as a work day of the period for which the employe is entitled to vacation under application of Section 3 of Article I — Vacations — of the Nonops Agreement of August 21, 1954. He would not receive another day off or vacation pay in lieu thereof.”

Claimants were paid eight hours pro rata for each day while on vacation and are not entitled to any additional compensation.

The Employes ignored the Vacation Agreement in the handling of this claim on the property. The reason is the Vacation Agreement requires a denial of the claim. It follows that your Board must deny the claim.

All matters contained herein have been the subject matter of correspondence and/or conference.

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 were given due notice of hearing thereon.

All of the Claimants were on vacation starting June 7 and ending July 4, 1965. The birthday of each of them fell on a day during that vacation period. Each was paid eight (8) hours for each day of his vacation, including the day of his birthday. An employe's birthday is a paid holiday. Employes are requesting an additional eight (8) hours holiday pay for each of Claimant's birthdays.

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

AWARD

Claim 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. 5255

The majority's decision to sustain the claim presented in Award No. 5255 is based on the principles and conclusions stated in its findings in Award No. 5251. Accordingly, our dissent to Award No. 5251 is equally applicable to Award No. 5255 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, 5253, 5253, 5254, 5255, 5256, 5257 and 5258 should dispose of this issue.

**D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger
O. L. Wertz**