

Award No. 5286

Docket No. 5362

2-N&W-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the current agreement when it failed to properly compensate Car Inspector N. Volanski for service performed on his birthday and holiday, July 5, 1965. (July 4, celebrated July 5).

2. That accordingly, the Norfolk and Western Railway Company be ordered to additionally compensate Carman N. Volanski, Car Inspector, in the amount of eight (8) hours' pay at the rate of time and one-half for service performed from 1:00 p.m. to 9:00 p.m. on his birthday, July 5, 1965, and holiday (July 4, celebrated July 5).

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.

Claimant was required to work eight hours on July 4, which fell on Sunday and was celebrated on July 5—claimant's birthday. He received eight hours for the Holiday, as well as a like amount for his birthday and eight hours pay at the time and one-half rate for working on that day.

Petitioner contends that Claimant is entitled to another payment at the time and one-half rate since he performed work on both his birthday and the Holiday. We disagree. The parties plainly anticipated this specific situation in Article II Section 6 (f) of their November 21, 1964 Agreement, which provides that "If an employee's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately pre-

ceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purposes of this Section."

Claimant did not exercise his option to celebrate his birthday on a date other than July 4 (celebrated on July 5) and there is no basis here for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and the many other awards cited therein that have passed upon precisely the same issue and rules as are now before us the present claim will be denied.

AWARD

Claim denied.

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.