Award No. 5310
Docket No. 5020
2-B&M-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

BOSTON AND MAINE CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement, Machinist Pliney N. Granger III was improperly compensated for March 16, 1965, the Claimant's Birthday (holiday) and also one of his assigned Vacation Days.

(2) That accordingly the Carrier compensate the Claimant for an additional eight (8) hours pay at pro rata rate for March 16, 1965.

EMPLOYES' STATEMENT OF FACTS: Pliney N Granger III, hereinafter referred to as the claimant, is employed by the Boston and Maine Corporation as a Machinist Helper temporarily advanced to Machinist, with a seniority date as a Machinist Helper of October 21, 1963.

March 16, 1965 was an assigned vacation day for the claimant and was also his birthday (holiday), for this day the claimant was paid eight hours pay at pro rata rate.

This dispute has been handled with all Carrier Officers authorized to handle grievances, including the highest designated official, with the result that he declined to adjust it.

The agreement dated April 1, 1936, as subsequently amended, is controlling.

POSITION OF EMPLOYES: We contend that the claimant should be paid as follows:

Eight (8) hours' pay at pro rate rate for being one of the claimants assigned vacation days, in addition eight (8) hours pay at pro rata rate for being the claimant's birthday (holiday).

The employes submit and contend that Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, and further amended by the Agreement of February 4, 1965, which added Section 6, is controlling, which for ready reference reads:

that the employe receive holiday pay for the holiday and an additional day of paid vacation.

The present treatment of holidays during vacation periods grows out of and is consistent with the doctrine that the justification for paid holidays is the maintenance of take-home pay. Thus, under present practice, the employe receives exactly the same pay during a vacation in which a holiday falls as he would receive if he were not on vacation but working at his regular position. **Both Emergency Boards 106 and 130 concluded that it would be inconsistent with the maintenance of take-home pay theory of paid vacations to provide additional pay or vacation for holidays falling during vacation.** (Emphasis ours.)

Essentially the same evidence is presented and the same arguments are advanced by the Organizations in support of the present proposal as to holidays falling during vacations as in the case before Emergency Board No. 130. As the Board concluded in connection with the proposals to change the eligibility rules for paid holidays, there have been no significant developments with respect to holidays during vacations which justify any further recommendations by the Board at this time."

Other Non-Operating Organizations which enjoy the Birthday-Holiday rule have in various conferences advised the undersigned that they recognize that when a birthday-holiday falls within a vacation period, that such vacation period is not extended by an additional day. In view of what appears to be somewhat a unanimous interpretation of the application of the Birthday-Holiday Rule during a vacation period, it is difficult to understand why the Petitioner would advance this claim to your Board. Actually, the Petitioner is asking your Board to disregard the recommendations of Presidential Board No. 162 and is asking your Board to read into Article II of the Agreement of February 4, 1965 a provision that is not actually there.

We respectfully request a denial award.

All data and arguments herein contained have been presented to the Organization in conference and/or correspondence.

Oral hearing is not desired unless requested by Petitioner.

(Exihibits 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.

Claimant's birthday occurred during his vacation on what would have been a work day of his regularly assigned work week.

It is well settled under the provisions hereinafter mentioned that holiday pay is not received for any of the seven general holidays thus occurring, but it is contended that birthdays constitute a different class of holidays.

While there are distinct differences between separate individual birthday holidays and the seven general holidays, the issue in this case is not whether the holiday as such should be paid for, but rather whether payment can be made for the holiday occurring during a vacation, under the conditions stated. Thus the question involves the Vacation Agreements rather than the Holiday Agreements.

Article VII (a) of the December 17, 1941 National Vacation Agreement provides as follows:

> "An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The June 10, 1942 Interpretations to Article VII (a) state:

> "This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the Carrier than if he had remained at work on such assignment***."

The above wording and interpretation were made pursuant to the "maintenance of take-home pay" theory, which was the basis of the agreement for paid holidays falling on a work day of the regularly assigned work week of the employe.

The original Vacation Agreement of December 17, 1941 was amended in various respects by the subsequent agreements of February 23, 1945, August 21, 1954 and August 19, 1960, none of which affected Article VII (a) or the June 10, 1942 Interpretation thereof. Each of the three modifying agreements expressly provided that as so amended the 1941 Agreement was to continue in effect subject to at least seven months' notice by any Carrier or Organization of a desire to change the agreement, specifying the changes desired, and a thirty days' notice by the other party, specifying changes desired by it, whereupon the proposals would be negotiated and progressed to a conclusion.

The adoption of the birthday holiday provision by these parties was made by the Mediation Agreement of February 4, 1965, Article II of which amended the Agreement of August 21, 1954 by the addition of a new Section 6. Article III of the same Agreement amended Articles 1 and 15 of the Vacation Agreement of December 17, 1941 as amended by the intervening Agreements, and expressly provided that as so amended the Vacation Agreement of December 17, 1941 was to continnue in effect thereafter, subject to the respective seven months' and thirty days' notices of desires for change to be followed by negotiations and subsequent agreements.

Thus no amendment has ever been made to Article VII (a) of the December 17, 1941 National Vacation Agreement. On the contrary, all subsequent

agreements have re-affirmed it. Consequently, it and the Interpretation of June 10, 1942 are in full effect and must be followed by this Board. It has no alternative but to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1967.

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