

Award No. 5373

Docket No. 5174

2-MP-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James E. Knox when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of February 4, 1965, when they denied birthday holiday pay to L. F. Ames, Machinist, Wednesday, July 14, 1965, DeSoto, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Ames in the amount of eight (8) hours for July 14, 1965, his birthday holiday.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a Machine Shop at DeSoto, Missouri, where L. F. Ames, hereinafter referred to as the Claimant, is employed as a Machinist, hours 7:00 A. M. to 3:00 P. M., work week Monday through Friday, rest days Saturday and Sunday.

On July 12, 1965, the Claimant started his vacation and his birthday holiday occurred on Wednesday, July 14, 1965; however, although the Claimant qualified under the Agreement, the Carrier declined to pay his birthday holiday pay, which constitutes the basis of the claim.

This matter has been handled up to and including the highest designated officer of the Carrier, who has declined it.

The Agreement of June 1, 1960, as amended, and the Agreement of February 4, 1965, are controlling.

POSITION OF EMPLOYEES: That the Agreement of February 4, 1965, particularly Article II, Section 6 (a), (b) and (c), reading:

employee working at locations away from home. The Employee would be the only one in a gang with a holiday, and it was to the interest of the Carrier as well as the employee to permit the employee to shift his birthday to the day before his rest days rather than interrupt the work schedule by the employee celebrating his birthday in the middle of the work week.

Since a birthday holiday could fall on one of the days already recognized as a holiday, special provision was necessary to permit the employee to select another day for his birthday holiday so that he could enjoy two days off with pay.

The problems presented by the birthday holiday which were not present for the other seven holidays have been dealt with specifically in Article II of the Agreement of November 21, 1964. A birthday holiday falling while an employee is on vacation does not present any problem which does not exist in connection with the other seven holidays. For that reason, no special provision was necessary in the agreement adding the birthday holiday to cover this situation. The provision in the existing birthday holiday rule, to wit, Section 3 of Article I of the August 21, 1954 Agreement, already was adequate to insure that the employee received the proper amount of compensation while on vacation, that is, a day's pay for each day of vacation.

The Shop Craft Agreement establishes the rate of pay for all employees. An employee is entitled simply to eight hours' pay at the appropriate hourly rate. The employee is entitled to nothing more unless the agreement specifically so provides. An example where the agreement specifically provides for more than eight hours' pay for a day is the holiday overtime rule. If an employee qualifies for holiday pay and is required to work on the holiday, he is allowed holiday pay and pay for time worked at the time and one-half rate. Another example is the agreement adding the birthday holiday which specifically provides that an employee whose birthday falls on a rest day will be paid holiday pay, and this pay will be in addition to any other to which he is otherwise entitled for that day. The agreement specifically sets forth the conditions under which an employee will receive more than eight hours' pay. The agreement does not state that an employee whose birthday falls while the employee is absent on vacation will receive more than eight hours' pay. The vacation agreement provides that an employee is to be granted either five, ten, fifteen, or twenty consecutive work days with pay as annual vacation. It does not entitle an employee to two days' pay for one day of vacation.

The Employees 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 waived right of appearance at hearing thereon.

The claimant is a regularly assigned employe with a workweek from Monday through Friday. In 1965 his birthday fell on Wednesday during a work week he was on vacation. The claimant was not regularly assigned to work holidays and his position was blanked on his birthday.

This case which arises under the National Agreement of February 4, 1965, is controlled by the findings in Award 2-5372.

AWARD

Claim sustained for 8 hours at the straight time rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February, 1968.