



Award No. 5376
Docket No. 5182
2-AT&SF-BM-'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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Boilermakers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Atchison, Topeka and Santa Fe Railway Company violated Article II, Section 6, paragraph (a) of the November 21, 1964 Agreement.

2. That accordingly the Atchison, Topeka and Santa Fe Railway Company compensate Boilermaker V. A. Cooney for eight (8) hours at the straight time rate of pay or an additional day off with pay, for his birthday holiday while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker V. A. Cooney, hereinafter referred to as the claimant, was regularly employed by the Atchison, Topeka & Santa Fe Railway Company, hereinafter referred to as Carrier, as a Boilermaker in Carrier's Shop at Topeka, Kansas, with work week Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1965 vacation May 3 through May 28, 1965, both dates inclusive, returning to service, Tuesday, June 1, 1965. Claimant's birthday was Thursday, May 6, a vacation day of his vacation period for which he was paid a day's vacation pay. However, Carrier failed to allow him birthday holiday compensation for the day, Thursday, May 6, 1965.

Claim was filed with proper officer of the Carrier under date of June 3, 1965, contending that claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday, May 6, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective August 1, 1945, as subsequently amended is controlling.

November 21, 1964 Mediation Agreement was negotiated, when they seized upon a distorted interpretation of Article II, Sections 6(a) and 6(b) of that Agreement to support their claim for dual payments when a birthday holiday or a national holiday occurs on a work day of the employee's work week and the employee is absent on vacation.

The Carrier has conclusively shown that Claimant Cooney was compensated for his vacation period in accordance with its historic practice and with the applicable rules of the governing Agreements.

The Carrier is uninformed as to the arguments the Employees may advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs presented by the Organization in this dispute.

All that is contained herein has been both known and available to the Employees or their representatives.

Oreal hearing is 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 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 were given due notice of hearing thereon.

The claimant is a regularly assigned employee with a work week from Monday through Friday. In 1965 his birthday fell on Thursday 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 November 21, 1964, 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.

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