

Award No. 5384
Docket No. 5205
2-CMStP&P-CM-'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. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated Article II, Section 6, Paragraph (a) of the November 21, 1964 Agreement.

2. That accordingly, the Carrier compensate Carman Raymond H. Nelson eight hours at the straight time rate or an additional day off with pay for his birthday holiday, which was denied.

EMPLOYES' STATEMENT OF FACTS: Carman R. H. Nelson, hereinafter referred to as the claimant, was regularly employed by the Chicago, Milwaukee and Pacific Railroad Company, hereinafter referred to as the Carrier, as a carman at Aberdeen, South Dakota.

Claimant's birthday was Tuesday, May 11, 1965, 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, Tuesday, May 11, 1965.

Claim was filed with proper officer of the Carrier, contending that the claimant was entitled to eight (8) hours birthday holiday compensation for his birthday, May 11, 1965, 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 September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the Carrier erred when it failed and refused to allow eight (8) hours birthday holiday compensation for his birthday, May 11, 1965, in addition to vacation pay allowed for the day.

have received had he not been on vacation during that period or had he not been granted a vacation in 1965, but instead paid in lieu thereof, and our position in this regard is fully supported by the rules and/or agreements cited above.

The Carrier submits that it is readily apparent that by the claim which they have presented the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim be denied.

All data contained herein has been presented to the employees and made a part of the question here in dispute.

The Carrier waives oral hearing unless request for such hearing is made by the employees, with the understanding that the Carrier shall have the right under the rules of your Board, to make full answer to all matters covered in the employees initial submission.

(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 Sunday through Thursday. In 1965 his birthday fell on Tuesday 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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