

Award No. 5424

Docket No. 5231

2-GN-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement hostler helpers, Eddie M. Filler and Fred Philippi, were improperly denied their right to work on their regular shift on their birthday at the Havre Shops, Havre, Montana.

2. That accordingly, carrier be order to compensate Eddie M. Filler and Fred Philippi eight hours at the punitive rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Messrs. Eddie M. Filler and Fred Philippi, hereinafter referred to as the claimants, are regularly employed by the Great Northern Railway Company, hereinafter referred to as the carrier, each of who are regularly assigned hostler helpers.

The carrier ordered hostler helper, Eddie M. Filler not to report for work on Sunday, March 7, 1965, one of his assigned work days of his work week, as it was his birthday. Fred Philippi, hostler helper, was ordered by the carrier not to report for work on his birthday, Friday, March 19, 1965, which was one of his regular assigned work days of his work week.

Hostler Helper Filler's job was filled on Sunday, March 7, 1965, by relief Hostler Helper Jack M. Haskell. Hostler Helper Philippi's job was filled on Friday, March 19, 1965, by relief Hostler Helper William Bates. Accordingly, carrier worked the same number of hostler helpers on Sunday, March 7, 1965 and Friday, March 19, 1965, that it works on any other Sunday or Friday.

This dispute has been handled with all officers of Carrier designated to handle such disputes, including Carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as amended, particularly by the Mediation Agreement dated November 21, 1964, is controlling.

POSITION OF EMPLOYEES: It is the position of the employees that carrier erred in not allowing claimants to work their birthday, when the birthday

(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.

Claimants were regularly employed by Carrier with regular assignments as hostler helpers. Claimant Filler was ordered by Carrier not to work on Sunday, March 7, 1965, one of his assigned work days, for the reason that it was his birthday. Claimant Philippi was ordered not to report to work on his birthday, Friday, March 19, 1965, one of his regularly assigned work days, because it was his birthday. Claim was made by the Organization for an additional 8 hours at the punitive rate of pay for each of claimants for the reason that they were improperly denied their right to work on their regular shift on their birthday.

The Organization cites a letter of Understanding dated November 3, 1949, which is as follows:

"With reference to our conference held in your office yesterday November 2nd, this is to advise you that it is the position of System Federation No. 101, that the regularly assigned Car Inspectors, Car Oilers and Brassers in train yards, Yard Diesel Inspectors and their helpers, Power Plant Employes and Classified Laborers will work Legal Holidays included in their regular assigned work days.

When the same number of employes are worked on holidays as are assigned to work that same day of each week, the regular assigned men will work the holidays (observed by State, Nation or proclamation) falling on that day of the week."

The Organization also cites Memorandum of Agreement No. 29 dated September 28, 1954, and revised on March 1, 1955, the pertinent part of which is as follows:

"A. When the same number of employes are worked on holidays as are assigned to work that same day of each week, the regularly assigned men will work the holidays (observed by State, Nation or Proclamation) falling on that day of the week. In all cases of reduced holiday forces, employes will be called on the basis of being first out on the established call list of the shift involved."

The Carrier, for its defense to this claim, contends that there was a reduction of force on each of the dates for which claim is made in this dispute; that Memorandum No. 29 permits a reduction of force on a holiday; and that since there is no rule setting out the requirement of a certain number of employes that must be worked on a holiday, claimants' jobs could be blanked.

This Board holds that in order to sustain this claim, the Organization must prove:

1. That the Claimants were ordered not to work on their birthday which was a regularly assigned work day of Claimant.
2. That there was no reduction of force on such date.
3. That another employe was called in to work in Claimant's place on claimant's birthday.

This Board finds that the Organization did not sustain its burden of proof in that the record fails to disclose that there was no reduction of force on the dates in question and that another employe was called in to work the job of the individual claimants herein. The record is silent as to whether the positions were filled by calling in a furloughed employe or whether co-workers filled in. In the event this position was not filled by calling in a furloughed employe, this claim cannot be sustained. There being no proof one way or the other in this record, it is found that the Claimants did not meet their burden of proof.

This Board finds that proof of lack of reduction of force and proof of the fact that another employe was called in to work in Claimant's place on his birthday are vital to Claimants' causes. This Board finds that Awards 15598 and 15783, cited by Claimants are not in point for the reason that in those cases, there was proof there was no reduction of force. This Board will follow Second Division Award No. 2070, which states:

"The claimants were not worked on their regular assignments on Washington's Birthday, said day being a recognized holiday. The assignments in question were, in effect, blanked. No other employes were used to work the claimants' assignments on the date in question. Claimants each received one day's pay at straight time for the holiday not worked.

There is nothing in the agreement which requires the carrier to work regularly assigned employes on holidays when their services are not needed.

The purpose of the holiday rule was to give a regularly assigned employe a holiday without a loss of take-home pay. Such was realized here."

Accordingly, this 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 3rd day of May 1968.

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