

**Award No. 5523**

**Docket No. 5152**

**2-MP-CM-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Car Inspector Cyril Lambert of the right to work his regular assignment on Wednesday, August 18, 1965, his birthday holiday.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Car Inspector Lambert in the amount of eight (8) hours at the punitive rate for Wednesday, August 18, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** Cyril Lambert, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, as a car inspector at Kansas City, Missouri, hours 7:00 A.M. to 3:00 P.M., work week Wednesday through Sunday, rest days Monday and Tuesday.

The Claimant's birthday occurred on Wednesday, August 18, 1965, one of his regular work days. The Claimant was advised by his foreman, Car Foreman J. P. Svetlecic, to take the day off, however, the Carrier found it necessary to fill this position on this date (August 18, 1965) but failed to comply with the rule and past practice, i.e., filling the job the same as other holidays and working the incumbent, which constitutes the basis of the claim. The Claimant works all holidays on his assignment, however, as stated the Carrier did not work this holiday in line with the rules and practices of working other holidays.

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

The Agreement of June 1, 1960, as amended, and the Agreement of November 21, 1964 are controlling.

ification of location must be deemed to conform to the established custom of a fixed point to go on and off duty, rather than as a limitation of the geographical boundaries within which service is to be performed. The latter is not possible because all admit that service must be performed in industry yards and on line of road. The only service boundaries established by the agreement are the seniority districts, so, it makes no difference whether the specification involved appears on the bulletin or not; the employe can be required to perform service within the seniority district as needed."

See also Award 3337.

At Kansas City, all carmen being on the same seniority roster and having seniority rights to work in both the train yard and repair track are assigned to work where needed. On the date of claim, the men assigned to work that day were given work assignments by their foremen based on the work to be performed that day. The force was rearranged as necessary to meet the demands of the service, taking into account the fact men were absent for various reasons, including Carman Lambert's absence on his birthday holiday.

It has been a practice on the property to rearrange the force as required. See Award 4257. The Agreement recognizes the need to do so. See Rule 10 applicable where an employe is required to change shifts in a rearrangement of forces. The use of a man from the repair track to help out in the train yard is not prohibited by the agreement. In fact, it is the well accepted practice on this property. There is no merit to the claim for an additional eight hours' pay at the punitive rate for a man at home enjoying his birthday holiday for which he had already been paid a day's pay. This claim must be denied.

(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.

This claim is based upon the premise that a regularly assigned employe covered by the basic agreement of November 21, 1964, has a demand right to work his position on the date of his birthday holiday if it is worked on that date.

Claimant's birthday occurred on August 18, 1965, a work day of his regular assignment. On August 14 he had asked permission to work on August 18; but was told to take that day off. Another employe worked Claimant's job; hence the claim.

The applicable agreement rules are:

Article II, Section 6(a) of the Agreement of November 21, 1964:

"(a) For regularly assigned employes, if an employe's birthday falls on a work day of the work week of the individual employe he shall be given the day off with pay; . . ."

Article II, Section 6(g) of the Agreement of November 21, 1964:

“(g) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday.”

Note to Rule 5 of the current Agreement reads:

“NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employes to complete the requirements the junior men on each shift will be assigned beginning with the junior man.”

The dispute is not one of first impression. On July 21, 1967, this Board rendered Second Division Award No. 5236 (Referee Johnson) sustaining a claim involving these same parties and agreement rules, the identical issue and a similar set of facts. There we made the following findings pertinent here:

“However, as noted above, Article II, Section 6(g) of the Agreement of November 21, 1964, provides that with relation to the question of whether an employe works on his birthday holiday, the practices and circumstances which determine that matter for the seven recognized holidays shall apply. That provision, like all others in the Agreement of November 21, 1964, must be observed.

The Note to Rule 5 clearly provides that when positions have to be filled on holidays they shall be filled from among those who would have worked if the holiday had not occurred. It further provides that men so assigned ‘will protect the work.’

A birthday holiday differs from others in that it relates only to an employe whose birthday anniversary it happens to be. However, under the provisions of the Note to Rule 5 of the current Agreement, and Article II, Section 6(g) of the Agreement of November 21, 1964, he must work on that holiday and protect the work if his position is worked on that day.”

The findings and conclusions made by the Board in Award No. 5236 are held to be controlling. Accordingly, this claim will be sustained.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of September, 1968.

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