

Award No. 5534

Docket No. 5371

2-GN-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier violated the Agreement when it denied Carman James Black the right to work on his birthday, July 16, 1965.

2. That accordingly, the Carrier be ordered to compensate the claimant in the amount of 8 hours, at the rate of time and one-half, account said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman James Black, hereinafter referred to as the claimant, is employed in his respective craft and class by the Great Northern Railway Company, hereinafter referred to as the Carrier, in its Mechanical Department facilities located at Havre, Montana. Claimant holds a regularly assigned position designated as "Car Shops and Trainyards."

Claimant's birthday was July 16, 1965, Claimant was ordered by local supervision not to report for work that day.

A claim was filed on July 29, 1965 on behalf of the claimant requesting 8 hours pay, at the rate of time and one-half, account claimant denied the right to work on his birthday as provided in the agreement.

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

The agreement effective September 1, 1949, as subsequently amended, it controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the only issue in dispute between the parties is whether or not the claimant was entitled to work on his birthday, July 16, 1965.

It is further submitted that under the clear and specific provisions of Article II of the November 21, 1964 Agreement, reading in pertinent part:

2097, 2471, 3023-3039, 3043-3060, 3093, 3216-3219, 3408, 3432, 3726-3729, 3889 and 3990)

For the foregoing reasons, the Carrier respectfully requests that the claims of the employees 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 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 waived right of appearance at hearing thereon.

Claimant was a regularly assigned employee whose birthday fell on a work day of his work week. He was instructed not to report to work on July 16, 1965 and seeks an additional eight (8) hours pay at the punitive rate because he was denied an opportunity to work on a work day of his work week, which also was his birthday-holiday under Article II — Holidays, Section A, paragraph (a) of the November 21, 1964 Mediation Agreement.

The trust of Petitioner's case is that historically Claimant and other carmen assigned to car shops and train yards at Havre, Montana have been assigned to work on all National Holidays pursuant to bulletin posted by Carrier in accordance with Rule 5 (a) of the current Agreement which provides as follows:

"* * * When a holiday occurs in the assignment of the employees work week, the work hours for that assignment will be thirty two (32) hours, except for those employees who are given four (4) calendar days' advance notice that they will work." (Emphasis ours.)

Consequently, Petitioner urges that Article II, Section 6, paragraph (g) of the November 21, 1964 Mediation Agreement is applicable. This provision reads as follows:

"Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

Carrier contends that the holiday work notices relied on by Petitioner as establishing a practice within the purview of Section 6, paragraph (g) of the November 21, 1964 Mediation Agreement were posted at the request of the local Shop Committee at Havre and do not constitute an agreement to employ a minimum force on legal holidays.

Petitioner's submission primarily consists of interpretations and conclusions not proven by substantial evidence of probative value. Furthermore, there is no evidence that another employee was called in to work in place of Claimant on his birthday. (Award 5424)

The burden of providing all essential elements of the claim rests with the Petitioner, which has not been met. Article II of the National Mediation Agreement of November 21, 1964 was not designed to compel Carrier to work employees on birthday-holidays, and Petitioner has failed to prove that Carrier is required to do so under existing rules and practices. Accordingly, the 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 30th day of September 1968.