



Award No. 5569

Docket No. 5359

2-N&W-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. 16, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the current agreement, the carrier improperly denied Carman Welder Don Eanes eight (8) hours birthday holiday compensation for his birthday February 26, 1965, which fell during his assigned vacation period.

2. That accordingly, the carrier be ordered to compensate the aforesaid employe eight (8) hours at the straight time rate as birthday holiday compensation.

EMPLOYEES' STATEMENT OF FACTS: Carman Welder Don Eanes, hereinafter referred to as the Claimant, is regularly employed by the Norfolk & Western Railway Company, hereinafter referred to as the Carrier, as a Welder at Roanoke, Virginia.

Claimant's birthday fell on Friday, February 26, 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.

Claim was filed with proper officer of the Carrier under date of March 28, 1965, contending that claimant was entitled to eight (8) hours Birthday Holiday compensation for his birthday holiday, February 26th, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of the Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

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

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow claimant eight (8) hours birthday holiday compensation for his birthday holiday, February 26, 1965, in addition to vacation pay allowed for that day.

daily compensation paid by the carrier than if he had remained at work on such assignment, this is not to include casual or unassigned overtime or amounts received from others than the employing carrier."

"Article I, Section 3, August 21, 1954 Agreement:

When during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

Article 7(a), above, provides that an employee will be no better or worse off by virtue of being on vacation. On this property all holidays are considered unassigned work days, therefore, had Claimant not been on vacation, he would not have worked on his birthday and would have received one day's pay for that day.

Article I, Section 3, makes provisions for holidays which occur during an employee's regular work assignment while he is on vacation by specifically stating the day will be considered as a day of vacation.

The basic question in this dispute has been firmly settled and consistently ruled upon by the Board. In Third Division Award 9635, Referee Johnson, it was stated in pertinent part:

"Under Article I, Section 3, of the Agreement of August 21, 1954, amending the Vacation Agreement of December 17, 1941, any of the seven recognized holidays (or substitutes therefor) falling within the vacation period is paid for as a vacation day, but not again as a holiday. That provision accompanied the 1954 Agreement's liberalization of regular vacation provisions."

Also see Third Division Award 9640 and Second Division Awards 2124, 2277, 2291 and 2800.

It is evident from the foregoing facts that: (1) Section 6(a), Article II of the November 21, 1964 Agreement does not provide for payment for holidays which fall within a vacation period, (2) the quoted portion of Section 6(a) stating " * * * he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any.", is not applicable as the birthday did not occur on other than a work day of the work week of the individual, and (3) Claimant would not have been entitled to any other pay for that day under any other rule, agreement or practice on this property; therefore, the claim is without merit and should be denied by the Board.

(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 fundamental issue involved in this case is the same as that considered in Award 5468, which arose out of a like dispute under corresponding provisions of a similar Agreement. Accordingly, we find our Award 5468 controlling in this case, despite variations in dates, parties, name and locations, which do not warrant repetitive discussion.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of November, 1968.