

Award No. 5570

Docket No. 5361

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 EMPLOYEES:

1. That under the terms of the current agreement carrier improperly denied Claimant birthday holiday compensation which fell during his assigned vacation period. (Listed below)

Car Repairer W. A. Keesee for eight (8) hours additional pay for January 24, 1965.

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: The aforesaid employe, hereinafter referred to as the Claimant, was regularly employed by the Norfolk & Western Railway Company, hereinafter referred to as the Carrier, as Car Repairer at Williamson, West Virginia.

Claimant's birthday fell on 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, contending that claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday holiday, 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. Copy of all correspondence exchanged attached and shown as Exhibit A.

The Agreement effective September 1, 1949 as subsequently amended is controlling.

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 14th day of November, 1968.