



Award No. 5627
Docket No. 5379
2-PC(PRR)-MA-'69

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. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)

PENN CENTRAL COMPANY (PRR)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement when it failed to compensate Machinist I. G. Murtiff eight (8) hours at the pro rata rate for his birthday holiday, August 31, 1965, which occurred while filling vacation vacancy of Foreman J. M. Williams.

2. That the Carrier be ordered to additionally compensate Machinist I. G. Murtiff, eight (8) hours at the pro rata rate for his birthday holiday, August 31, 1965, in addition to compensation received that date.

EMPLOYEES' STATEMENT OF FACTS: Machinist I. G. Murtiff, herein-after referred to as the Claimant, is regularly employed by the Pennsylvania Railroad Company, hereinafter referred to as the Carrier, as a Machinist, Second Trick, Monday through Friday, rest days Saturday and Sunday, at East Altoona Enginehouse.

During the period of August 27 through August 31, Claimant filled vacation vacancy of J. M. Williams, Gang Foreman.

August 31, 1965, was Claimant's birthday, and on this date he was filling the gang foreman vacancy, although his regularly assigned position is machinist.

While filling the gang foreman vacancy he was step-rated and allowed gang foreman's rate of pay on a day-to-day basis for each day worked as a gang foreman.

On October 1, 1965, the Local Chairman of the Union filed a claim with the Foreman in behalf of the Claimant for a day's pay or a day off with pay on account of requiring him to work on his birthday. Copy of the letter is submitted as Exhibit A.

Under date of October 8, 1965, the Foreman denied the claim. Copy of that letter is submitted as Exhibit B.

To grant the protest of the Employees in this case would require the Board to disregard the Agreements between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute or established by practice. The Board has no jurisdiction or authority to take any such action. See Second Division Award No. 1122, Third Division Award Nos. 6803, 4763 and Fourth Division Award No. 242.

CONCLUSION

The Carrier has shown that, even if this dispute were listed properly, the Claimant was not covered by the rules of the Schedule Agreement between this Carrier and the IAM during the week beginning August 27, 1965 and has no valid right to make claim thereunder.

Therefore, the Carrier respectfully requests that your Board dismiss or deny the claim of the Employees in this matter.

(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 were given due notice of hearing thereon.

Petitioner contends that claimant is entitled to additional compensation for his birthday-holiday under Article II, Section 6 of the National Agreement dated February 4, 1965, which occurred on August 31, 1965 while he was filling a vacation vacancy as a Gang Foreman. Carrier contends that claimant was subject to the terms and conditions of the vacancy that he filled while serving as a Gang Foreman, and was not entitled to birthday-holiday pay under the National Mediation Agreement applicable to Machinists but not Foremen.

The record reveals that claimant held a regular position as a Machinist at the Carrier's Enginehouse, Altoona, Pennsylvania as well as seniority as a Gang Foreman from May 20, 1965, which was established in accordance with the Schedule Agreement between the Carrier and Brotherhood of Railroad Shop Craft Supervisors. Furthermore, claimant temporarily left his regular assignment as a Machinist to fill the position of Gang Foreman while the incumbent was on vacation from August 27, 1965 through August 31, 1965. It is undisputed that claimant's pay while serving as a Gang Foreman was calculated on a monthly basis, which comprehended remuneration for the birthday-holiday of the position over a twelve (12) month period.

Petitioner avers that prior awards relied on by Carrier concerning holiday pay under similar circumstances are not germane because Article II, Section 6(a) of the Mediation Agreement dated February 4, 1965 in part provides as follows:

" * * *; if an employee's birthday falls on other than a work day of the workweek of the individual employee, 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."

Carrier contends that claimant failed to qualify as a regularly assigned Machinist during the week in question as services performed as a Gang Foreman during said period do not constitute requisite service as a Machinist on the work days immediately preceding and following his birthday as required under paragraph (c) of Section 6. Moreover, Carrier contends that Rule 4-J-1 of the Schedule Agreement between the parties is applicable. It provides as follows:

"RULE 4-J-1.

An employee assigned temporarily to fill a supervisory position will for the tour of duty be paid the rate of the position filled."

Petitioner does not refute Carrier's contention that prior to the instant dispute Mechanics temporarily assigned to Gang Foremen vacancies have been paid in accordance with the formula established under the Gang Foremen's Agreement. Moreover, Article II, Section 6(g) of the 1965 National Mediation Agreement concerning existing rules and practices, indicates that an individual's birthday is to be treated in the same manner as other specified legal holidays. (Award 15564, Third Division.)

During the entire workweek preceding the birthday-holiday, claimant worked as a foreman subject to the compensation provisions of the January 22, 1965 Agreement between Carrier and the Brotherhood of Railroad Shop-Crafts Supervisors, which included partial compensation for a birthday-holiday. The record also reflects that the arrangement was in accordance with established practice and prior construction of Rule 4-J-1 of the Schedule Agreement between Petitioner and Carrier.

The claimant elected to work as a foreman during the workweek in which his birthday occurred subject to the provisions of the Agreement between Carrier and the Brotherhood of Railroad Shopcrafts Supervisors; hence, he did not qualify for compensation in lieu of an additional day off for his birthday-holiday as a regularly assigned machinist under the National Mediation Agreement dated February 4, 1965. The higher paying position held by claimant during the week in which his birthday occurred was subject to the terms of a separate Agreement between Carrier and another organization which included a compensation formula for recognized holidays, including birthdays. Careful examination of applicable provisions in both Agreements fails to reveal any basis for dual coverage as urged by Petitioner in this case. Accordingly, the claim must be denied.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1969.

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