

Award No. 5639

Docket No. 5562

2-GN-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement when it denied Carman Frank Shattswell the right to work on his birthday-holiday, June 19, 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 of said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Frank Shattswell, 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 June 19, 1965. Claimant was ordered by local supervision not to report for work that day.

A claim was filed on June 28, 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-holiday 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, is 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.

2. This Board has repeatedly held that holiday work guarantees must be based on clear and concise contractual language which illustrates an intent to create such a guarantee.

3. Numerous awards by the Board, many covering claims on this property, have repudiated attempts by the Organization to create a holiday work guarantee. (See Awards 2097, 2471, 3023-3039, 3043-3060, 3093, 3216-3219, 3408, 3432, 3726-3729, 3889 and 3990.)

4. The holiday force reduction practices on this property covering nationally recognized holidays are diametrically opposed to the Organization's demands in this case.

5. Section 6 of the November 21, 1964 birthday amendment to the holiday pay agreement clearly intends that the employee shall have a "day off with pay" on his birthday if consistent with the requirements of the service.

6. Section 6(g) of the above referred to agreement does not, in itself, contain any language which requires employees to be worked on their birthday holiday, and is merely intended to retain the "rules and practices thereunder" which have allowed this Carrier the right to work such employees on their holidays if necessary, or give them a day off with pay.

7. There are no existing rules with practices thereunder that guarantee the claimant any holiday work on this property.

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 with assigned hours of 3:00 P. M. to 11:00 P. M. Thursday through Monday. His birthday fell on Saturday, June 19, a workday of his workweek. Carrier ordered Claimant not to report for work on this date because it was his birthday, which action resulted in this claim for an additional eight (8) hours at the punitive rate of pay. The Organization contends that their Exhibits A-1 through A-11 sustain their burden of proof that it is the custom, practice and tradition of this Carrier to work their employees on holidays; that a birthday is to be treated like any other holiday; and that, therefore, this Claimant is entitled to the day's work on his birthday at the punitive rate of pay. This Board cannot uphold this contention.

The other seven enumerated holidays are different from the birthday-holiday in one respect only; that is, the seven enumerated holidays fall for all employees of this craft at the same date for each employee which requires the Carrier to retain a force in sufficient number to continue operation. The birthday-holiday does not fall on the same date for each employee and, there-

fore, in a large number of instances their positions can easily be blanked on this particular holiday.

This Board further finds that there is no evidence contained in the record that any other employe was called to fill Claimant's position on his birthday. The burden of this proof rests with the Organization.

We will follow Awards No. 5424 (this referee), 5534 (Ives) and 5539 (Ives). Accordingly, the Board finds no agreement violation, as alleged, and the claim will, therefore, 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 7th day of February, 1969.