



Award No. 5701

Docket No. 5478

2-SOU-CM '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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreements, particularly the Agreement of April 3, 1965, when they denied birthday holiday pay to Carman D. J. Bullard, Knoxville, Tennessee, for March 4, 1966.
2. That accordingly, the Southern Railway Company be ordered to compensate the aforesaid employe in the amount of eight (8) hours' pay at straight time rate for his birthday as listed in part one of claim.

EMPLOYEES' STATEMENT OF FACTS: Carman D. J. Bullard, hereinafter referred to as the Claimant was regularly employed by Southern Railway Company, hereinafter referred to as Carrier, as a Carman in Carrier's shop at Knoxville, Tennessee, his work week being Wednesday through Sunday with rest days on Monday and Tuesday.

Beginning on February 23, 1966 through March, 6, 1966, Claimant was on his assigned vacation, and during this period of two weeks, his birthday occurred on March 4, 1966. Claimant's birthday, March 4, 1966, was within his work week and during his vacation period which fully substantiates his claim, since he qualified under the provisions of the Agreement. Carrier, however, declined to pay the eight (8) hours at straight time rate for Claimant's birthday holiday. This act on the part of Carrier constitutes a violation of the April 3, 1965 Agreement which is the basis for this claim.

Claim was filed with the proper officer of Carrier under date of April 2, 1966, contending that Claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday, March 4, 1966, 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 a satisfactory adjustment.

The Agreement effective March 1, 1926 as subsequently amended, particularly by the Agreement of April 3, 1965, is controlling.

(Carrier's Exhibit A), in which the employees proposed adoption of a rule providing that they be paid for holidays falling on a work day of their regularly assigned work week during the period of their assigned vacation. Like notices were served on most of the nation's carriers. As evidenced herein, the carriers declined to agree to such a rule and Emergency Board No. 162 recommended against adoption of such a rule by the parties negotiating on a joint national basis. The real meaning and intent of the language of the April 3, 1965 agreement, insofar as it relates to an employee's birthday falling on a work day of his regularly assigned work week during the period he is on vacation is reflected by interpretations placed upon such language of the agreement by both management and labor representatives who participated in negotiation of the same on a joint national basis.

It is therefore evident that presentation of claim to the Board constitutes nothing more than an attempt by the Brotherhood to obtain by an award of the National Railroad Adjustment Board a rule which it was unable to obtain for the employees it represents in the usual manner provided for under Section 6 of the Railway Labor Act. The Board will not be a party to any such scheme. It is prohibited from doing so under the provisions of the Railway Labor Act.

In these circumstances, the Board cannot do other than make a denial award.

(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.

Parties to said dispute were given due notice of hearing thereon.

The fundamental issue involved in this case is identical with that considered in our Awards 5468, 5475, 5478, 5479, 5569, 5571, 5659 and 5662, among others, which arose out of like disputes under the same or corresponding provisions of applicable Agreements. In fact, Awards 5475, 5478 and 5662 involved the same Agreement and parties herein. Accordingly, we must conclude that our Awards 5475, 5478 and 5662 constitute controlling precedent in this case despite variations in dates, names and locations which do not warrant repetitive discussion.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.

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