Award No. 5753
Docket No. 5506
2-SP-MA '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (MACHINISTS)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES:

1. That Machinist J. H. Reitz, (hereinafter referred to as claimant) was improperly compensated under applicable terms of current controlling agreements while on vacation.

2. That accordingly, the Carrier be ordered to additionally compensate claimant in the amount of eight (8) hours' pay at the pro rata rate for the date of August 25, 1966, the date of claimant's birtday falling on a workday of his assigned work-week while on vacation.

EMPLOYES STATEMENT OF FACTS: Claimant is regularly employed by the Southern Pacific Company (Pacific Lines) hereinafter referred to as Carrier, as a Machinist in Carrier's Sacramento General Shops, with work-week of Monday thru Friday, rest days Saturday and Sunday.

Claimant's birthday was Thursday, August 25, 1966, a vacation day of his scheduled vacation period, for which he was paid a day's vacation pay. However, Carrier declined to allow him birthday holiday compensation for the day, Thursday, August 25, 1966.

Claim was filed with the proper officer of the Carrier under date of September 18, 1966, contending that claimant was entitled to eight (8) hours Birthday Holiday compensation for his birthday, August 25th, in addition to vacation pay received for that day, and claim was subsequently handled up to and including the highest Carrier officer designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective April 16, 1942 as subsequently amended by the February 4, 1965 Agreement, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that Carrier erred when it failed and declined to allow claimant eight (8) hours birthday holiday compensation for his birthday, August 25, 1966, in addition to vacation pay allowed for the day.

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.

Claimant was assigned to position of Machinist at Carrier's General Shops at Sacramento, California, hours 7:00 A.M.-3:00 P.M. (30-minute lunch period), rest days, Saturday, Sunday and Holidays. He was scheduled for and observed his vacation August 15 to 26, inclusive.

Carrier denied the claim at issue for the assigned reason that Claimant was compensated eight (8) hours at the straight-time rate of pay August 25, scheduled vacation day that was also his birthday.

The attempt in this and related Dockets to associate the Birthday-Holiday Agreement with the Vacation Agreement gives rise to the fundamental issue in all these disputes over the Carrier's refusals to honor claims for an additional 8-hour day, at the pro rata rate of pay, for a birthday-holiday which falls on a workday of the individual employe's work-week, because that day was paid for at the pro rata rate to compensate for his earned vacation.

The Vacation Agreement of December 17, 1941 has withstood the rigors of time and change very well and perhaps that is some reason why the parties, in negotiating amendments to Article I of the Vacation Agreement of December 17, 1941, as amended by the Agreement of August 21, 1954 and the Agreement of August 19, 1960, at the same time they negotiated amendments to Article II—Holidays, of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, very astutely found and used words in Section 6 as an addition to Article II, which, in our studied opinion, leave no doubt that the parties contracted on the subject of birthday-holiday with the object and purpose in mind that the Vacation Agreement should not serve as a bar to the individual employe's full enjoyment of his special holiday, without finding the need to write exceptions into either Article II or Article III of the February 4, 1965 Mediation Agreement. We have an expression from the illustrious Wayne L. Morse to back us up in that opinion.

Professor Morse, a former United States Senator, and a recognized authority in labor-management relations, is closer than anyone else to the Vacation Agreement. As Chairman of the President's 1941 Emergency Board, he wrote the vacation section of the Board's report of November 5, 1941, mediated the Washington settlement of December 1, 1941, also wrote those sections of the Vacation Agreement of December 17, 1941, which the parties had previously failed to agree upon in negotiations, and then was called in on July 30, 1942 to referee disputes that had arisen over the meaning and intent of the Agreement that he had fushioned. His formula for the settlement of disputes involving the Vacation Agreement is still alive and should be found to be of continuing interest for present day use.

Referee Morse says in his public award, in connection with the Vacation Agreement of December 17, 1941, for purposes of interpreting the same, that:

> "In addition, the referee wishes to point out that this award is not based upon any strict or literal interpretation of any section of the agreement when in the opinion of the referee such an interpretation would have done violence to the purpose of the aagreement or would have produced an unfair, inequitable, and unreasonable result. The referee has adopted the same general point of view in this case which he has enunciated in many previous cases insofar as the interpretation of collective-bargaining contracts is concerned.
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> "Thus, he has stated:
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> * * *
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> "Labor Disputes can seldom be settled on a fair and equitable basis, productive of harmonious labor relationships and conducive to maximum production by resorting to the legalisms and technicalities of contract law . . . Arbitration boards and courts are not prone, and rightly so, to apply the strict rules of contract construction to such collective-bargaining agreements when it is clear from the record of a given dispute that the application of technical legal rules of construction would do violence to the intention of the parties and defeat the very purpose of the collective-bargaining agreement; namely, the promotion of harmonious labor relations."

We accept, in this and related dockets, what Referee Morse has said about his interpretation of the Vacation Agreement and we adopt his general point of view that the interpretation of the Vacation Agreement by this Division should not do volence to the purposes of said Agreement, nor produce an unfair, inequitable, and unreasonable result.

We find, therefore, that the denial of claims for an additional eight hour day at the pro rata rate of pay for a birthday-holiday which falls on a workday of the individual employe's workweek, because the same day had been paid for to compensate as earned vacation, would be to use the Vacation Agreement of December 17, 1941, as amended, to do violence to the intention of the parties who negotiated Article II, Section 6 of the February 4, 1965 Agreement and, therefore, would produce an unfair, inequitable and unreasonable result.

We have noted, without attaching any importance to Carrier's reference, in its submission, to the May 19, 1966 Notice, served by System Federation No. 114, under the Railway Labor Act, as amended, in which the Employes proposed and all paid holidays falling within a vacation period be granted by extending the vacation period accordingly, etc.

We are confident that Carrier recognizes as distinction between the observance of a paid holiday as both a day paid for and as an additional day of vacation, as opposed to the extra pay which is in contention in this Docket.

Carrier also devotes a part of its submission to the citation and discussion of the Division's awards which sustain its position in this Docket. The reason why these cited awards do not impress us favorably at this time

will be found in sustaining Award No. 5751 covering Docket 5516 in which we also interpret Article II, Section 6, Mediation Agreement of February 4, 1965, de novo.

Claimant was improperly compensated while on vacation.

AWARD

Claim 1 sustained;

Claim 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.

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