



Award No. 5754

Docket No. 5507

2-SP-M- '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 EMPLOYEES'
DEPARTMENT, AFL-CIO (MACHINISTS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist H. B. Carr (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 1, 1966, the date of Claimant's birthday falling on a workday of his assigned work-week while on vacation.

EMPLOYEES' STATEMENT OF FACTS: Claimant is regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as Carrier, as a machinist at Carrier's Sacramento General Shops, with a workweek of Monday thru Friday, rest days Saturday and Sunday.

Claimant's birthday was Monday, August 1, 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, Monday, August 1, 1966.

Claim was filed with the proper officer of the Carrier under date of September 11, 1966, contending that Claimant was entitled to eight (8) hours birthday holiday compensation for his birthday, August 1, 1966, 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 1, 1966, in addition to vacation pay allowed for the day.

the employee last worked before the holiday in the case of an employee not having a job assignment, then:

"(1) If such employee is not assigned in any manner to work on the holiday, the holiday shall not be considered as a vacation day of the period for which the employee is entitled to vacation, such vacation period shall be extended accordingly, and the employee shall be entitled to his holiday pay for such day."

(Article III, referred to above, includes "Employee's Birthday".)

The proposal quoted above seeks to secure the same additional pay for claimant that Petitioner seeks in the instant claim, proving beyond any doubt that existing Agreement rules do not provide for said payment and that Petitioner is fully aware of the fact. Any other determination places Petitioner in the pointless position of seeking something already possessed.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

(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 amended 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.

This dispute is from the same property, involves the same rules of Agreement between the same parties, without any material difference in facts, and presents the precise issue which was before this Division in Docket 5506 this day decided by sustaining Award No. 5753. Although this is a companion case there is a proposition raised by this Carrier, in each of its separate submissions, which may prove to be of general interest in connection with Article I, Section 3—Agreement of August 21, 1954, which provides:

"When during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

This Carrier, as well as some others, look upon Article II, Section 6(g), February 4, 1965 Mediation Agreement, as a bridge, over and across Article

II, Section 6(a) through 6(f), to connect Article II, Section 6(g) up with Article I, Section 3, supra, so as to carry the birthday-holiday forward into the last mentioned Article and Section as an eighth recognized holiday on a par with legal holidays, contrary to the obvious intent of the contracting parties who negotiated Section 6 as an addition to Article II.

Article II, Section 6(g)—Agreement February 4, 1965, provides:

“Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday.”

The reach is too far to be convincing. Carrier appears to assume an extreme position when it undertakes to match up Article II, Section 6(g) with Article 7(a), Vacation Agreement, and Article I, Section 3, supra, contrary to what appears to us to be the clear intent of all the language under investigation.

It is our judgment that the provisions of Article II, Section 6(g) preserve the protect the Carrier's right, consistent with existing rules and practices thereunder, to work an individual employee on a birthday-holiday at the applicable rate of pay.

Claimant was improperly compensated under existing rules and practices thereunder, according to what we find in this Docket and Awards 5751 and 5753.

A W A R D

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.