



Award No. 5757

Docket No. 5511

2-SP-CM- '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 (CARMEN)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company violated Article II, Section 6(a), of November 21, 1964 Agreement.
2. That accordingly, the Southern Pacific Company compensate Cabinetmaker E. A. Schneider eight (8) hours at the straight time rate of pay for his birthday while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman E. A. Schneider, hereinafter referred to as the Claimant was regularly employed by the Southern Pacific Company (Pacific Lines hereinafter referred to as Carrier, as a Cabinetmaker in the Saw Mill at West Oakland, California, with a workweek Monday through Friday, rest days of Saturday, Sunday and Holidays.

Claimant took his 1966 vacation August 1 through August 26, 1966 both dates inclusive, returning to service Monday, August 29, 1966. Claimant's birthday was Wednesday, August 3, 1966 a vacation day of his vacation period for which he was paid a day's vacation pay. However, Carrier failed to allow him birthday holiday compensation for the day, Wednesday, August 3rd.

Claim was filed with proper officer of the Carrier under date September 9, 1966, contending that claimant was entitled to eight (8) hours birthday holiday compensation for his birthday, August 3rd, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The Agreement effective April 16, 1942 as subsequently amended particularly by the Agreement of November 21, 1964 is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow claimant eight (8) hours birthday holiday compensation for his birthday August 3, 1966, in addition to vacation pay allowed for the 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 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 regularly assigned during the period in question to position of Cabinetmaker (Carman) at Carrier's West Oakland Mill at Oakland, California, rest days Saturday, Sunday, and holidays. He was scheduled for and observed his paid vacation August 1 to 26, 1966, inclusive, as scheduled. His birthday, Wednesday, August 3, 1966 would have been a regularly assigned workday for him if he had not been scheduled off for his earned vacation with pay as provided in the applicable Vacation Agreement.

Carrier treated the birthday in the same manner as the seven recognized legal holidays that fall on a workday of the employee's workweek during his scheduled vacation period as provided in Article 1, Section 3, Agreement August 21, 1954 and practices thereunder. Claim is made for an additional 8-hour day at the pro rata rate as premium pay for Claimant's birthday-holiday and was denied by Carrier.

The fundamental issue in this case is, as Carrier states, whether or not Claimant is entitled to a second payment of eight hours at the pro rata rate of pay for his birthday which fell on a workday of his workweek during his scheduled vacation period.

The same issue was before the Division in Dockets 5506, 5507, 5508, 5509 and was decided adversely to Carrier's contentions by sustaining Awards 5753, 5754, 5755, 5756, respectively. See also, Docket 5516, Award No. 5751.

Claimant was improperly compensated while on vacation.

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.