



Award No. 5769
Docket No. 5515
2-PC(PRR)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. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Machinists)

PENN CENTRAL COMPANY
(formerly The Pennsylvania R.R. Co)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement of February 4, 1965, when it denied Machinist P. A. Gipprich an additional eight (8) hours' pay for September 30, 1965, this being his birthday-holiday.
2. That the Carrier be ordered to compensate Machinist P. A. Gipprich an additional eight (8) hours' pay at the Grade "E" pro rata rate of pay for September 30, 1965.

EMPLOYEES' STATEMENT OF FACTS: Machinist P. A. Gipprich, hereinafter referred to as the claimant, was regularly employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, first trick, in the wheel shop, a part of the heavy repair shops, Altoona, Pennsylvania, with a work week from Monday through Friday, rest days Saturday and Sunday.

Claimant was on vacation from September 27, 1965, to October 1, 1965, inclusive, and was paid as such. His birthday fell on September 30, 1965, for which he did not receive any remuneration.

The preponderance of the carrier's heavy repair shops in Altoona, Pennsylvania, were shut down for vacation from August 2, 1965, through August 27, 1965, inclusive.

In order to keep the railroad operating there were a number of employees required to work during the vacation shut-down period. Claimant was required to work during the month of August while the shops were shut down and given his vacation at a later time.

All employees in the heavy-repair shops at Altoona, Pennsylvania, who are required to take their vacation during the shut down period and whose birthday-holiday falls during that time are paid birthday-holiday pay over and above their regular vacation pay.

On October 4, 1965, the local committeeman of the union filed a claim with the foreman in behalf of the claimant, for an additional eight (8) hours'

tion of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to them. To grant the claim of the Employee in this case would require the board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The board has no jurisdiction or authority to take any such action.

CONCLUSION: The carrier has established that no provision of the applicable Agreements has been violated and that the claimant is not entitled to the additional compensation which he claims.

Therefore, the carrier respectfully submits that your honorable board should deny the claim of the employees in this matter.

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 were given due notice of hearing thereon.

The facts, as agreed, have been submitted by the parties jointly.

It is further in evidence that Carrier shut down a preponderance of its Heavy-Repair Shops in Altoona, Pennsylvania, and scheduled the annual vacation for observance by those machinists who were affected by the shutdown. Any of that craft of employees, whose birthday fell on what normally would have been a work day of their regularly assigned workweek, were compensated by being granted an additional day's pay at the pro rata rate of their regular assignment.

Claimant worked while the shops were down and was off for vacation at a later time during which his birthday fell on a work day in the workweek of his regular assignment as machinist.

Claimant was not compensated properly while on his vacation.

A W A R D

Claim (1) sustained.

Claim (2) sustained.

NATIONAL RILAROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September, 1969.

DISSENT OF CARRIER MEMBERS TO AWARDS NOS. 5769-5779

These awards are completely erroneous and have no precedent value whatsoever.

The overwhelming number of prior awards (92) issued by eight different referees — all in favor of the carriers' position — would indicate a callous disregard for stare decisis, especially so when the neutral makes no effort to show where the prior awards were palpably erroneous.

A weak attempt is made to sustain the neutral's position when he indicates that the parties used "needless language" in the agreement and he suggested what language should have been used.

It is abundantly clear that this neutral went outside of the current agreement governing the parties involved to sustain claims which had absolutely no merit, as the decision to sustain the instant claims is based on conjecture, misinterpretation or misapplication of the contract language.

Therefore, we most vigorously dissent.

/s/ H. F. M. BRAIDWOOD
H. F. M. Braidwood

/s/ W. R. HARRIS
W. R. Harris

/s/ J. R. MATHIEU
J. R. Mathieu

/s/ P. R. HUMPHREYS
P. R. Humphreys

/s/ H. S. TANSLEY
H. S. Tansley