



Award No. 5775
Docket No. 5528
2-SP(PL)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 EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinist)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist L. Pardini (hereinafter referred to as claimant) was improperly compensated under applicable terms of 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 October 20, 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 machinist at carrier's Bayshore Diesel Shop, with a workweek of Monday thru Friday, rest days Saturday and Sunday.

Claimant was on his scheduled vacation on Thursday, October 20, 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, Thursday, October 20, 1966.

Claim was filed with the proper officer of the carrier under date of November 17, 1966, contending that claimant was entitled to receive eight (8) hours' birthday holiday pay for his birthday, October 20, 1966, in addition to vacation pay received for that day. Claim was subsequently handled up to and including the highest officer of the 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 February 4, 1965 Agreement, 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, October 20, 1966, in addition to vacation pay allowed for the day.

Article II of the February 4, 1965 Agreement, reads in pertinent part as follows:

amended, of their desire to supplement existing agreements in accordance with the proposals accompanying said letter. One of the proposals, concerning the identical factors involved in this docket, reads in pertinent part as follows:

"Section 2. Section 3 of Article 1 of the Agreement of August 21, 1954, is hereby further amended effective January 1, 1967, to read as follows:

When any of the recognized holidays, as defined in Article III of this notice, occurs during an employee's vacation period, the following shall apply:

(a) If the holiday falls on a work day of the employee's job assignment in the case of an employee having a job assignment, or on a work day of the position on which 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 sought to secure the same additional pay for claimant that petition 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 placed petition 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.

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 waived right of appearance at hearing thereon.

Carrier erred when it failed or refused to allow Claimant eight (8) hours' birthday-holiday compensation in addition to vacation pay.

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 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