



Award No. 5779

Docket No. 5536

2-SOU-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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Railway Company violated the Agreement of April 3, 1965, when they denied Birthday-Holiday pay to R. E. Lee, Machinist, Wednesday, June 29, 1966, and to R. S. Coleman, Machinist, Thursday, June 30, 1966 at Charlotte, North Carolina.
2. That accordingly, the Southern Railway Company be ordered to compensate Machinist Lee in the amount of eight (8) hours pro rata pay for June 29, 1966, and compensate Machinist Coleman in the amount of eight (8) hours pro rata pay for June 30, 1966, their respective birthdays.

EMPLOYEES' STATEMENT OF FACTS: Machinists R. E. Lee and R. S. Coleman, hereinafter referred to as the claimants, were regularly employed by the Southern Railway Company, hereinafter referred to as the carrier, as machinists in carrier's Charlotte Roadway Shop at Charlotte, North Carolina, with work week Monday through Friday, rest days Saturday and Sunday.

Claimants were on vacation during June 1966 and their respective birthdays fell on vacation days for which they were paid a day's vacation pay. However, carrier failed to allow them birthday holiday compensation for the respective birthdays. Lee on Wednesday, June 29, 1966 and Coleman on Thursday, June 30, 1966.

Claims were filed with the proper officer of the carrier under date August 2, 1966, contending that claimants were entitled to eight (8) hours birthday-holiday compensation for their respective birthdays in addition to vacation pay received for the days, 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 March 1, 1926, is controlling, as subsequently amended particularly by the agreement of April 3, 1965.

Railway Labor Act, in particular, Section 2 of Article I — Vacations contained in Appendix A attached thereto in which the employees' proposed adoption of a rule providing that they be paid for holidays falling on a work day of their regularly assigned work week during the period of their assigned vacation. Like notices were served on most of the Nation's carriers. As evidenced herein, the carriers declined to agree to such a rule and Emergency Board No. 162 recommended against adoption of such a rule by the parties negotiating on a joint National basis. The real meaning and intent of the language of the April 3, 1965 agreement, insofar as it relates to an employee's birthday falling on a work day of his regularly assigned work week during the period he is on vacation, is reflected by interpretations placed upon such language of the agreement by both management and labor representatives who participated in negotiation of the same on a joint National basis.

It is therefore evident that presentation of claims to the Board constitutes nothing more than an attempt by the association to obtain by an award of the National Railroad Adjustment Board a rule which it was unable to obtain for the employees it represents in the usual manner provided for under Section 6 of the Railway Labor Act. The board will not be a party to any such scheme. It is prohibited from doing so under the provisions of the Railway Labor Act.

In view of all the evidence of record, the board cannot do other than make a denial award. See Second Division Awards 5230, 5231, 5232 and 5233.

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 were given due notice of hearing thereon.

Carrier erred when it failed and refused to allow Claimants 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 effect 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/ P. R. HUMPHREYS
P. R. Humphreys

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

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