Award No. 5904
Docket No. 5689
2-RDG-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 109, RAILWAY EMPLOYES' DEPARTMENT, A. F. L.-C. I. O. (CARMEN)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Reading Company violated Article II, Section 6, Paragraph (a) of the November 21, 1964 Agreement.

2. That accordingly, the Reading Company compensate Carmen Carroll E. Schaeffer, Samuel W. Powell, Donald M. Guiles, John Stec, Paul A. Triviets, Alvin J. Woodford, Carl A. Brown, William A. Fisher, Edward M. Forry, Joseph LaBarara, Helen M. Snyder, Harry T. Runkle, John S. Bebin, Daniel J. Ferragame, Wilber S. Berkheiser, Thomas W. Reber, and Benjamin M. Randazzo, (8) hours each, straight time rate of pay, for their birthday while on vacation, which was denied.

EMPLOYES' STATEMENT OF FACTS: All (17) claimants were regularly employed by the Reading Company, hereinafter referred to as carrier, at Reading car shops Monday thru Friday, rest days Saturday, Sunday and Holidays, Reading, Pennsylvania.

Claimants were scheduled vacations starting July 10, 1967 thrugh August 4, 1967. Each claimant, while on vacation celebrated his birthday holiday, a vacation day of his vacation period for which he was paid a day's vacation. However, carrier failed to allow him birthday holiday compensation for the day he, or she, celebrated same, respective date of birthday holiday.

Claim for the additional (8) hours straight time pay was filed with the proper officers of the Carrier up to and including the highest officer so designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective January 16, 1940 as subsequently amended particularly by the Agreement of November 21, 1964, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the Carrier erred when it failed and refused to allow Claimants (8) hours birthday holiday pay for birthday occurring on their respective birthday holiday dates, in addition to vacation pay allowed for the day.

II, Section 6(a) of the November 21, 1964 Agreement governs, ". . . if an employee's birthday falls on a work day of the workweek of the individual employee he shall be given the day off with pay; . . ."

When the expressed purpose of the birthday-holiday provision, the interpretation of "work day of the workweek", and the doctrine of "maintenance of take-home pay" are correlated with the peculiar application of the birthday-holiday, reason demands the denial of the Brotherhood's claim. First, the Claimants were accorded the "day off with pay" as mandated by Article II, Section 6(a). Second, the doctrine of "maintenance of take-home pay" has meaningful application since the Claimants would not have worked on these dates, even if they had not been on vacation. Hence the Claimants received that very amount which is ". . . exactly the same pay during a vacation in which a holiday falls as he would receive if he were not on vacation but working at his regular position." (Emergency Board 161, 162, p. 39-40, Award 13278) Had the Claimants not been on vacation during this period, they still would not have worked on the various dates of their birthdays.

Carrier submits that better analysis and well-reasoned principles mandate the denial of the organization's attempt to derive pecuniary benefit from a fortuitous coincidence beyond the letter and intent of the November 24, 1964 Agreement.

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.

The seventeen Claimants in this case all celebrated their birthdays while on vacation during July or August 1967. Their claims for eight hours' birthday-holiday pay (in addition to vacation pay) were denied and appealed to the Board.

The parties' contentions are similar if not identical to their contentions in Award 5230 as well as those of other Carriers and Organizations in related cases. They involved, among other matters, Article II of the November 21, 1964 Agreement, findings of Presidential Emergency Boards Nos. 106, 101, 162 and 163, and Article 7(a) of the December 17, 1941 Vacation Agreement.

The dispute concerning birthday-holiday pay first came to the Board's attention in Award 5230 which concerned a January 1965 vacation of a Reading Company car packer. The Board's denial decision was rendered on July 20, 1967 (along with denial decisions in six related cases involving other Carriers).

On October 13, 1967, however, the Board (with a different Referee) sustained an identical claim in Award 5251 (and seven related cases). Since then, the same issue has been presented to eleven other Referees (not including the present one); seven have rendered denial awards and four rendered sustaining ones. In total, 141 decisions have been issued to date, of which 91 were denials and 50 sustaining awards.

In the meantime, however, the Carriers and Organizations have amended their vacation agreement to specifically provide that employes will

receive holiday pay (in addition to vacation pay) when their birthday-holidays follow during a vacation period. That agreement was reached on September 2, 1969, to be effective January 1, 1968. Thus, it would appear that all that remains to clear up are those pending claims which arose prior to January 1, 1968 (of which this is one). There are no critical decisions left to be made or contractual interpretations which would have any precedential value. Each claim simply involves a day's pay.

It would be futile, in our judgment, to pursue the same course which has been followed since the issue first came before The Board. Carriers and Organizations have won and lost cases, but the controversy was never finally resolved. Each successive Referee has been asked to rule on the same issue all over again. No useful purpose would be served by this Referee engaging in yet another extensive analysis of the entire contractual dispute. His personal conclusions would add nothing to the situation, nor would they convince or satisfy the losing party.

There is, nevertheless, a fair and reasonable means available for disposing of this case (and the six related cases submitted to this Referee). The Board has long recognized the principle that a Board decision should be deemed controlling in a dispute involving the same or similar facts, the same parties, and the same contractual provisions. The soundness of that principle needs no elucidation, and it can be applied here, regardless whether the controlling award is a sustaining or denial one. Where there are conflicting awards on the same property, the predominant ones will be deemed controlling.

On the basis of the above stated principle, then, the claim here will be denied since, in Award 5230, involving the same parties, contract and issue, an identical claim was denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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