



**Award Number 5948**

**Docket Number 5829**

**2-MP-CM-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O.  
(Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Coach Cleaner Mrs. Mary Hunter, St. Louis, Missouri, of the right to work her regular assignment on March 12, 1965, her birthday holiday.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Coach Cleaner Hunter in the amount of eight (8) hours at the punitive rate for March 12, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** Mrs. Mary Hunter, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as coach cleaner, East Jefferson Passenger yards, St. Louis, Missouri, and is assigned to scrubbing and cleaning on the inside.

The claimant's birthday occurred on March 12, 1965, one of her regular work days. The claimant was advised not to report for work that day, however, the carrier found it necessary to fill this position on this date (March 12, 1965) but failed to comply with the rule and past practice, i.e., filling the job the same as other holidays and working the incumbent, which constitutes the basis of the claim. The claimant works all holidays on her assignment, however, as stated the carrier did not work this holiday in line with the rules and practices of working other holidays, and to substantiate the employees' contention, we herewith quote for your Honorable Board's convenience letter dated April 2, 1965, signed by Local Chairman of Coach Cleaners, Mr. Roosevelt Jones, Sr.:

"St. Louis, Mo.  
April 2, 1965

"To General Chairman W. H. Bond

Mr. W. H. Bond:

I am sending you Mrs. Mary Hunter's birth date which is March 12. Her birth date was on her work day.

overtime work for any of the other carmen assigned to work that day. Since overtime or holiday overtime work was not necessary on date of claim in this dispute, Rule 5 in the agreement on this property including the Note thereto is "highly irrelevant" for the same reasons that reference to the train yard holiday board was highly irrelevant in the case before your Board in Award 5321.

In the instant claim, the note to Rule 5 comes into play only if the force assigned to work is inadequate and the employee who has the birthday is also needed. On date of claim, the force at East Jefferson consisted of approximately 80 employees, including 54 coach cleaners. All except claimant worked. The force was adequate to perform the work. The carrier had no need to resort to the procedure set forth in the note to Rule 5. The regular force was not augmented or increased. The men regularly assigned to work that day were instructed by the supervisors of the tasks to be performed falling within their craft at the East Jefferson facility. The foreman used the coach cleaners either inside the cars or outside depending on need. On the date of claim, Coach Cleaner Jones, whom the employees mentioned in progressing the claim, was assigned to work that day. Coach Cleaner Jones performed the duties which may have been required of her in line with her duties on any day of her work week.

The claimant in this dispute enjoyed having her birthday off with pay. Coach Cleaners who had March 12, 1965, as a day of their assignment protected the work. The carrier was not obligated to call claimant under the provisions of the Note to Rule 5. The carrier fully complied with the birthday holiday rule by giving claimant the additional day off with pay.

For the reasons fully set forth herein, the claim in this docket is not supported by the rules cited and should be declined.

**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.

Claimant relies on the note to Rule 5 of the Agreement and Article II, Section 6(g) of the November 21, 1964 Agreement, alleging that Carrier violated same when it failed to assign Claimant a coach cleaner to work her regular assignment on March 12, 1965, Claimant's birthday.

Article II, Section 6(g) of the November 21, 1964 Agreement provides as follows:

"(g) Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

The note to Rule 5, states:

"NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employees assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the

holiday had not occurred and will protect the work. Local committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employees to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

Claimant's position is that if an employee's job is worked on a holiday, said employee shall be entitled to work the job by virtue of the note to Rule 5: "\* \* \* men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. \* \* \*"; that Claimant's position was worked on his birthday holiday.

Carrier's defense to this claim is that the 1st paragraph of Article II, captioned "Holidays" required it to give Claimant one additional day off with pay on her birthday as was done in this instance; Rule 5 is a pay rule and states how employees will be paid if required to work on rest days and holidays, but that said rule does not require Carrier to work an employee on a holiday; that Claimant's position was not filled on said holiday; that coach cleaner's work is a pool and does not have individual positions with exclusive duties, and therefore there is no such thing as one coach cleaner filling the position of another coach cleaner; that the note to Rule 5 does not provide that specific positions be filled.

Claimant is basing her claim on the contention that her position was worked on her birthday-holiday, and therefore the requisites of the note to Rule 5 compelled Carrier to call her for work on the date in question. She is not claiming that she should have been called due to her seniority. In support of her position, Claimant cites this Board's Awards 5236 and 5523 involving the same parties to this dispute, wherein said Awards, in interpreting the note to Rule 5, the same rule as herein, concluded that an employee is entitled to work on his birthday-holiday and protect the work "if his position is worked on that day". (emphasis ours) Thus, the sole determination we have to make herein is whether or not Claimant's position was worked on the day in question.

The record is clear that no other coach cleaners or other employees were called in to perform the work that Claimant normally performed, and thus the facts in this dispute are distinguishable from the facts in Award 5236, where a set-up helper was used to fill Claimant's carman's position.

Inasmuch as the record clearly shows that the coach cleaners, used by Carrier on the date in question, performed their usual work as coach cleaners and that they performed work which they were entitled to perform as part of their regular assignment, it cannot be concluded that Claimant's position was worked on his birthday. Claimant had the burden of proving that her position was worked on said date, and failing to sustain said burden, we must deny the claim.

**A W A R D**

**Claim denied.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**ATTEST: E. A. Killeen**  
**Executive Secretary**

**Dated at Chicago, Illinois, this 19th day of June, 1970.**