

Award No. 5979

Docket No. 5714

2-RDG-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

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 Car Inspector Thomas Holden (8) hours straight time rate of pay, for his birthday while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Thomas Holden, hereinafter referred to as the claimant, was regularly employed by the Reading Company, hereinafter referred to as the carrier, as Car Inspector, Rutherford Yards, Rutherford, Pennsylvania, with workweek Thursday through Monday, rest days Tuesday and Wednesday.

Claimant took his vacation November 16, 1967 through November 20, 1967 both inclusive. Claimant, while on vacation November 16, 1967 celebrated his birthday, 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, November 16, 1967.

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 EMPLOYEES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant 8 hours birthday holiday pay for his birthday Nov. 16, 1967, in addition to vacation pay allowed for the day.

pecuniary benefit from a fortuitous coincidence beyond the letter and intent of the November 21, 1964 Agreement and the clear precedent of Award 5230.

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.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This claim involves the same parties, Agreement and issue as in Award No. 5977. For the reason given in that Award we will deny the instant claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1970.