

Award No. 5982
Docket No. 5732
2-B&A-(BK)-'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. 18, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Blacksmiths)

BANGOR AND AROOSTOOK RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current Agreement as amended by the November 21, 1964 National Agreement, when they failed to compensate Blacksmith Fred T. DeWitt eight (8) hours' pay for his birthday, Monday, September 27, 1965.

2. That accordingly, the Carrier be ordered to compensate the above named employee eight (8) hours' pay at the applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Blacksmith Fred T. DeWitt, hereinafter referred to as the claimant, is a regularly assigned employee of the Bangor and Aroostook Railroad Company, hereinafter referred to as the carrier, at its Derby Shops, Derby, Maine, with rest days, Saturday and Sunday. He was on his regularly assigned vacation during the week of September 27, 1965 through October 1, 1965, and his birthday was Monday, September 27, 1965.

Carrier has issued instructions that when a birthday falls on a vacation day of the regular vacation period of an employee, such birthday-holiday will be considered as one day of vacation.

The vacancy created by the claimant being on vacation was not filled by a vacation relief employee.

This dispute has been handled with all carrier officials designated to handle such disputes, including the highest designated Officer of the carrier, with the result that they have all declined to make satisfactory adjustment.

The Agreement effective August 1, 1955, as subsequently amended, particularly by the November 21, 1964 Agreement, is controlling.

Secondly, if an employee's birthday occurs on other than a work day of his work week, "he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any." The obvious intent of the language just quoted indicates that this clause is not applicable to the first situation.

Section 6(c) of Article II simply outlines the requirements for qualification.

Section 6(g) of Article II is also controlling as it has been our practice to give employee a day off with pay when a holiday falls on a work day of the work week of the individual, and consistent with the mutually agreed to interpretations of the current Vacation Agreement, employees have not been paid dual payments for any of the other recognized holidays that came within their vacation period, nor has their vacation period been extended by the day.

If it were the intent of Article II, Section 6 of the November 21, 1964 Agreement that an extra day's compensation be paid for a birthday or any of the other holidays that might fall within a vacation period on a day that is a work day of an employee's work week, certainly this amendment to the August 21, 1954 Agreement would have so stated. It is apparent that the sole purpose of this section was to provide an additional holiday consistent with prevailing holiday practices, and the language in no way contemplated dual payments for a single day, but rather held to the doctrine of "maintenance of take-home-pay."

It is the position of this carrier that it was the intent of the agreements aforementioned to protect the annual earnings of the individual employee, not to impose a penalty payment on the carrier when a holiday covered by agreement falls within the employee's vacation period.

May we respectfully call the attention of this Board to the following denial awards of similar claims handled before the Second Division:

Award Nos. 5230, 5231, 5232, 5233, 5310, 5311, 5328, 5329, 5330.

We respectfully request a denial award of this Board.

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.

Claimant held a regularly assigned position of Blacksmith. His work week was Monday through Friday; rest days Saturday and Sunday. He was on vacation commencing Monday, September 20, 1965 through Friday, October 1, 1965. Monday, September 27, 1965, was his birthday. For that day he received one day vacation pay; and, was denied one additional birthday-holiday day's

pay. Petitioner claims the denial violated Article II - Holidays, Section 6, of the National Agreement of November 21, 1964.

This case presents the same issue as in our Award No. 5981. For reasons stated in that Award we will sustain the instant claim.

AWARD

Claim sustained.

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.