

**Award No. 5986**

**Docket No. 5737**

**2-SLSW-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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That Carrier violated the rules of the current controlling agreement when it failed and refused to properly compensate Carman G. Killian, Dallas, Texas, for the Labor Day Holiday, September 4, 1967, worked during his vacation period.

2. That accordingly the Carrier be ordered to additionally compensate Carman Killian in the amount of twenty (20) hours at pro rata rate for working his regular assignment in lieu of vacation for September 4, 1967.

**EMPLOYEES' STATEMENT OF FACTS:** Carman G. Killian, hereinafter referred to as the claimant, is regularly employed at the Dallas, Texas Repair and Inspection facilities of the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier. Claimant worked his regular assigned job for the three weeks of his vacation schedule, and the September 4th Holiday fell on one of his vacation work days, which he worked. He was compensated for eight (8) hours at time and one-half for working his vacation day, and eight (8) hours straight time for vacation pay. Claim was subsequently filed for an additional twenty (20) hours' compensation, eight hours at time and one-half for working the holiday, plus eight hours pro rata rate for holiday pay, and has been appealed to the highest designated officer of the carrier, who has declined to settle the matter.

The agreement effective November 1, 1953, as subsequently amended, together with the Agreement of August 21, 1954, the Vacation Agreement of December 17, 1941, as amended, and the Agreement of August 19, 1960 are controlling.

**POSITION OF EMPLOYEES:** It is submitted that on the basis of the irrefutable facts as outlined above, the carrier improperly compensated Claimant for working a day of his vacation on the holiday, September 4, 1967,

**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.

Claimant was regularly assigned as car inspector. His scheduled vacation period was August 16-September 5, 1967, during which he was required to work. The period included September 4, 1967, Labor Day, a contractually specified holiday. It was a work day of his work week on which he was required to work.

For his work on said Labor Day Claimant was compensated as follows:

“for working on the holiday 1 day’s pay at pro rata plus 8 hours at prescribed penalty overtime rate of time and one half for the hours he worked — the total being the equivalent of 20 hours at pro rata rate.”

It is Petitioner’s contention that Claimant should have and was contractually entitled to be paid, in addition to the eight hours at pro rata rate, time and one-half because of his working on the holiday.

The objective of the Holiday Agreement is to free an employe from work on the specified holidays for his enjoyment without diminution of earnings.

Under the agreement before us a holiday which coincides with a vacation day is held to be and treated as a vacation day. This being so, and the Agreements before us not providing for double penalty pay for working a holiday which is also a vacation day, the penalty compensation paid for having worked on a vacation day which was also a holiday must be held to be the total measure of penalty compensation to which Claimant was contractually entitled for the coexisting and coextensive hours which he worked on the coincidental vacation and holiday of September 4 (Labor Day). To decide otherwise would require us to insert into the Agreements a penalty provision not agreed to by the parties. Such is beyond the jurisdiction of this Board.

#### 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.

## **LABOR MEMBERS' DISSENT TO AWARD 5986**

It appears that in the instant Award the Referee, with the support of the Carrier Members, prefers to dispense his own brand of industrial justice rather than follow the sound awards of previous Referees; Award Nos. 5598 (Dugan), 10892 (Russell), 11146 (Rose), 14741 (Ives), 16638 (McGovern), 16696 (Devine) and 17688 (Kabaker), which sustained the position of the Employees on the proper interpretation and application of the same collective bargaining Agreement as involved in this Award.

The Labor Members dissent.

**O. L. Wertz**  
**R. E. Stenzinger**  
**E. H. Wolfe**  
**D. S. Anderson**  
**E. J. McDermott**