

Award No. 6023
Docket No. 5768
2-SLSW-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the rules of the current controlling agreement when Carman R. E. Lee, Pine Bluff, Arkansas, was not permitted to work his regular assignment on the Wheel Truck on his birthday holiday, Tuesday, June 13, 1967, and his position was filled by Carman W. R. Schrantz.

2. That accordingly the Carrier be ordered to compensate Carman Lee in the amount of five (5) hours at the overtime rate account being deprived of working his regular assignment on his birthday holiday, June 13, 1967.

EMPLOYEES' STATEMENT OF FACTS: Carman R. E. Lee, hereinafter referred to as the claimant, with seniority date of March 21, 1949, is regularly assigned in the Car Department Back Shop at Pine Bluff, Arkansas, the major repair point of the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, as Freight Carman Welder and Carman Welder on Car Department Wheel Truck, 7:00 A. M. to 3:00 P. M., with Saturday and Sunday rest days.

Sometime in August, 1959, carrier put into operation to work out of Pine Bluff a four-ton truck, commonly called the Car Department Wheel Truck, which is equipped with a cable and winch, and carries wheels and other supplies and equipment for changing wheels and making minor repairs to cars set out on the road. When the truck was put in operation, bulletins were posted for two regular assigned positions to work on the truck, and two relief positions to work on the truck when either or both of the two regular assigned men were unable to protect their job. Carman Welder-Checker N. Funderburg, now deceased, and Lead Carman Checker Francis Koonce, now holding a foreman's assignment, were the first two carmen assigned to the regular positions. Carman Koonce held his assignment until he was promoted to foreman, and Carman Funderburg held his until he went on sick leave in

held on the property. Carrier therefore submits that it must be considered as submitted long after the presentation of consideration and action on the claim on the property.

Since Section 6(a) of Article II of the November 21, 1964 Agreement specifically provides that if the birthday of a regularly assigned employe falls on a work day of his work week "he shall be given the day off with pay" and Section 6(g) provides that existing rules and practices govern whether an employe works on a holiday and the payment for work performed on holidays, which rules were interpreted in Second Division Awards 3866 and 5585 to the effect that work on a holiday is casual or unassigned overtime and Carrier has the right to decide whether a position will work on a holiday and is not required to give an employe opportunity to work on his birthday at penalty rate, it is clear that there was no violation in permitting claimant to observe his birthday holiday and using Carman Schrantz to work with the wheel truck on claim date.

Claimant was given the day off with pay and was properly allowed eight hours at pro rata rate as provided in the rule. The rules do not provide for any additional payment.

Carrier submits that there was no violation of the agreement and respectfully requests that the claim be denied.

Without prejudice to its position that the claim is entirely without support under the rules, carrier submits that the claim that claimant is due an allowance of time and one-half for work not performed is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent to work performed. Please see recent Second Division Awards 5618 (Ives); 5548 (Murphy); 5034, 5035, 5166, 5299 (Weston); 4772, 4832, 4836, 4837, 4838, 4840, 4849, 4910, 4914, 4955, 4956, 4972, 5051 (Johnson); 4864, 4865 (McMahon); 4818 (Hall); 4778 (Whiting); 3868, 3873 (Anrod); and there are many others.

Carrier reiterates that the claim is not supported by the rules and should be denied.

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.

Here is is alleged that Claimant, a regularly assigned Freight Carman Welder and Carman Welder on Car Department Wheel Truck at Pine Bluff, Arkansas, should be compensated in the amount of five hours at the time and one half rate because he was not called to work his assignment on his birthday, June 13, 1967, when Relief Carman Welder on Wheel Truck was

used in his place instead. On this date the Wheel Truck was dispatched to Altheimer, Ark. at 7:00 A. M. to adjust a shifted load of laminated beams on Car EJE 50627 which crew of northward train StLSSE set out on house track on the previous day. Claimant has been allowed eight hours' pay at the straight time rate of his position for the holiday.

It so happens that, as between these parties, this Board has already dealt with the subject of the instant dispute. In ruling on a request for premium pay for a birthday holiday falling within the Claimant's assigned vacation period, Award No. 5585 says:

“ * * * We do not agree with the contention of the Organization that the last portion of Section 6(a) of Article II of the November 21, 1964 Agreement * * * together with Superintendent T. W. Bellhouse's letter of April 19, 1965, * * * guarantees that when it becomes necessary to work a job on an employe's birthday holiday he will be given the opportunity to work his birthday at penalty rate. * * * On the contrary, the Organization submitted a letter of Superintendent Bellhouse dated March 11, 1965, addressed to General Chairman L. F. Wood in regard to birthday holiday, which specifically refers to his instructions given after reaching an understanding in conference with the General Chairman that: ‘ * * * when it becomes necessary to work a job on an employe's birthday holiday the employe will be given the opportunity to work his birthday and will be paid an additional day at penalty rate if he elects to do so.’ Here, Claimant did not elect to work his birthday and therefore the letter of April 19, 1965 of Superintendent Bellhouse is not applicable herein and thus not controlling in deciding the dispute. * * * ”

In the light of said prior ruling it would appear that for a sustaining award on this issue on this property, it must be demonstrated that claimant had elected to work on his birthday, in instances when his job was worked, and had given Carrier advance notice of such election. No such showing was made here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October, 1970.