



Award No. 6094

Docket No. 5904

2-MP-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr 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 Car Inspector W. M. Harrison, Little Rock, Arkansas, the right to work his regular assignment on August 15, 1968.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Car Inspector Harrison in the amount of eight (8) hours at the punitive rate for August 15, 1968.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector W. M. Harrison, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Little Rock, Arkansas. Claimant is assigned by bulletin to Job #42 in the inbound yard at North Little Rock Terminal, work week Thursday through Monday, rest days Tuesday and Wednesday, hours 3:00 P.M. to 11:00 P.M.

The claimant's birthday occurred on August 15, 1968, and he was instructed by bulletin that his job would not work on this date account it being his birthday holiday. However, the carrier found it necessary to fill this position on this date (August 15, 1968) and moved Carman H. K. Phillips, who is assigned by bulletin to combination relief job #77 (filling vacancies of employees off account sickness and injury), rest days Monday and Tuesday, work week Wednesday through Sunday, hours 3:00 P.M. to 11:00 P.M., from his regularly assigned job to fill the claimant's job on this date.

When the carrier failed to comply with the rule and practice, i.e., filling the job the same as other holidays and working the incumbent, the agreement was violated.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

that reason was not entitled to work from the Holiday board. This statement is certainly highly irrelevant, as **no overtime or Holiday overtime work was necessary** and for that reason the question of whether or not Carman Eilerman was eligible for a call from the board has absolutely no bearing on the case. The only employe who was entitled to penalty pay for working his regular assignment on Wednesday, January 13, 1965 would have been Carman Reeves, and he only, as this day was a holiday for Carman Reeves by virtue of the day being his birthday.'"

As stated above, the birthday holiday is different from the other holidays as they are holidays for all employes covered by the agreement. The above statement then makes it clear that "no overtime or Holiday overtime work was necessary" in that case. Similarly no overtime or holiday overtime work was necessary in the instant case before your Board. In Award 5321 the carman in question was given his birthday holiday off with pay. The carrier has done likewise in the instant case.

As stated by your board in the concluding paragraph of Award 5321, holiday work for the Carman who had the birthday holiday would have been overtime work for him, since it was his birthday, but it was not holiday overtime work for any of the other carmen assigned to work that day. Since overtime or holiday overtime 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 would come into play only if the force assigned to work was inadequate and the employe who had the birthday was also needed. On the date of claim, the men assigned at the North Little Rock train yard included approximately 50 carmen on running repairs and on servicing freight cars, 68 car inspectors, and 20 carmen on heavy repairs. All assigned on date of claim worked their regular shift except claimant. The force was adequate to perform the work. The carrier had no need to resort to the procedures set forth in the note to rule 5 and did not do so. The regular force was not augmented or increased. The regular force simply worked one man short that day deferring, if necessary, any of the repairs which would not delay the operation of the trains.

The claimant in this dispute enjoyed his birthday off with pay. 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.

The issue in this docket has now been resolved by your board in Award 5844. A car inspector was absent on his birthday holiday. His position was not filled but a man was sent from the repair track to assist with the train yard work. Your board denied the claim on behalf of the absent car inspector. The facts in this docket are identical and call for a similar denial award.

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 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 were given due notice of hearing thereon.

Claimant is assigned by bulletin to Job #42 as Car Inspector in the inbound yard at North Little Rock Terminal, work week Thursday through Monday, rest days Tuesday and Wednesday, hours 3:00 P. M. to 11:00 P. M.

The Claimant's birthday occurred on Thursday, August 15, 1968, and he was instructed by bulletin that his job would not work on this date because it was his birthday holiday. However, the Carrier moved Carman K. K. Phillips from his regularly assigned job to fill the Claimant's job on this date.

Claims involving the same parties, issues and rules have been sustained by a series of Awards by this Division. Second Division N.R.A.B. Award No. 5236 (Johnson) states:

"A birthday holiday differs from others in that it relates only to an employe whose birthday anniversary it happens to be. However, under the provisions of the Note to Rule 5 of the current Agreement, and Article II, Section 6(g) of the Agreement of November 21, 1964, he must work on that holiday and protect the work if his position is worked on that day."

See also Second Division Awards 5523, 5956, 5975, 6087, 6088, 6089 and 6090.

AWARD

Claim sustained.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1971.