Award No. 6113
Docket No. 5966
2-MP-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Carman C. R. Brooks, Memphis, Tennessee, the right to work his regular assignment on December 30, 1968.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Brooks in the amount of eight (8) hours at the punitive rate for December 30, 1968.

EMPLOYES' STATEMENT OF FACTS: Carman C. R. Brooks, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Memphis, Tennessee. Claimant is assigned by bulletin to job of truck driver and his birthday occurred on December 30, 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 (December 30, 1968) and Carman Jack West who is assigned to job of emergency truck driver was moved from his regularly assigned job to fill the claimant's job on this date. When the carrier failed to comply with the rules 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.

The Agreement of June 1, 1960, as amended, and the Agreement of November 21, 1964, are controlling.

POSITION OF EMPLOYES: Article II, Section 6(g) of the Agreement of November 21, 1964, reads:

From the foregoing, the carrier states emphatically that it has not been the past practice to fill positions on holidays by the incumbent of a job as alleged by the employes. We have seen that each of the carmen on the repair track at Memphis is permitted to have his birthday off with pay and that a claim has been filed only where a carman can be said to have some duties which are exclusive to his position. Those duties were performed by another carman who was on duty and who had the day as a regular work day of his assignment. The fact that the carman filled the position of Carman Brooks on the latter's birthday holiday does not support the claim unless a rule or a practice operating on these facts support the claim. We have shown that neither the Note to Rule 5 nor the practice supports the claim. Although preferred jobs are advertised to give shop craft employes an opportunity to bid on a seniority basis, all shop craft employes of a given craft or class are qualified to perform the work of their craft and may be required to perform any of the work of the craft. This is true even of work included in a preferred position. The fact that one shop craft employe filled the position of another standing alone lends no support to a monetary claim for the absent shop craft employe.

Carman Brooks, the Claimant herein, was allowed his birthday holiday off with pay in accordance with Article II of the agreement of November 21, 1964. The carrier fully complied with the birthday holiday rule and there is no basis for the monetary claim in this dispute. It follows that the claim 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.

The Board, in the interest of brevity is, with the consent of the parties, combining Dockets 5966, 5958 and 5952 for the reason that while the claimants are different, their grievances are identical. It is further noted that in these three dockets the same Carrier and Organization are involved, and that the same clauses, rules and issues are presented for decision.

All three claimants, (Carman C. R. Brooks in Docket 5966; Carman C. J. Collins in Docket 5958; Carman C. L. Womble in Docket 5952 claim that contrary to Article II, Section 6(g) of the November 21, 1964 Agreement and the Note to Rule No. 5, that on their respective birthday holidays, their respective jobs worked, and that the work each would normally have performed had each been at work, was assigned to and performed by other employes. In each instance the remedy sought is 8 hours' pay at the punitive rate.

The above clauses have been the subject of at least 13 previous awards and both parties refer to them in their ex parte rebuttal briefs.

The Board acknowledges that in the instant cases the thrust of Carrier's position is to seek review by the Board of previous awards construing and

applying Article II 6(g) and Note to Rule 5 in relation to birthday holidays. In fact Carrier's Rebuttal Brief, page 4, states:

> "Where an award is based on incorrect facts the Carrier is certainly entitled to show the correct facts and is entitled to reconsideration of the issues on the basis of the correct facts."

With the above general postulate the Board has no disagreement.

Reference is made to Third Division Award No. 10911, which succinctly states the following:

> "When the Division has previously considered and disposed of a dispute involving the same parties' same rules and similar facts presenting the same issue as is now before the Division, a prior decision should control. Any other standard would lead to chaos.
>
> . . . in the absence of any showing that (previous) awards are patently erroneous (and no such showing was made) we must follow them."

The above citation notes correctly that chaos would be the consequence absent recognition by the parties and the Board of the impact and role of prior awards.

However, the Board also notes that it can contribute to expeditious and orderly resolution of grievances arising under the Agreements, by making every effort to assure that awards construing and applying Agreement terms to particular fact situations, have a minimum of inconsistency and maximum of consistency. The parties have a right to rely on such a postulate, and in fact need such stability so as to effectively implement and administer the agreements with a minimum of costly and time consuming litigation of disputes. Finally, achieving the goal of awards which are harmonious and consistent in the interpretation and application of the Agreement(s), is further justified on the grounds that it will tend to improve the labor management relationship to the extent of reducing friction, contention and misunderstanding.

When such a goal has been achieved, as it has in the instant issues under consideration, continual resort to Board procedures merely serves to clutter the calendar and delay hearings and awards in matters now pending.

The facts in the instant cases are simply recapitulated. In all major respects the parties to these disputes are agreed on them. The claimants on their birthdays were not required to work, but instead were assigned "off" on their respective birthdays with pay. In each instance another carman was assigned and performed the work, which had each claimant been at work, would have been performed by each claimant, and not by the carman assigned.

Article II, Section 6(g) of the November 21, 1964 Agreement reads:

> "(g) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday."

The pertinent part of Note to Rule 5, is as follows:

"Notice will be posted (5) days preceding a holiday, listing the names of the employes assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work."

Award 5236 construed the above with admirable brevity and clarity, as follows:

"The Note to Rule clearly provides that when positions have to be filled on holidays they shall be filled from among those who would have worked if the holiday had not occurred. It further provides that men so assigned 'will protect the work.'

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.**" (Emphasis ours.)

In each of the claims under consideration an employe performed the work that Claimants Brooks, Collins and Womble would have performed on their birthday had they been at work, and thus under the language of Article II, Section 6(g) and Note to Rule 5 cogently construed above, each claimant was denied that to which he was entitled to under the agreement.

Analysis and study of Carrier's ex parte and rebuttal briefs and their related correspondence reveals that the grounds for refusing these claims rests on misconstruance of the above Award and Article II, Section 6(g) and the Note to Rule 5.

Paraphrasing of Carrier's misconstruance is as follows:

Because a birthday holiday is a holiday for only one employe and is perforce a regularly assigned work day for all others, the Carrier has contractual sanction to work a reduced work force and Carrier does not have to resort to the procedures set forth in the Note to Rule 5.

The above paraphrasing is drawn from the Ex Parte Brief, Page 8, Docket 5966, and in addition appears in the Briefs submitted in Dockets 5958 and 5952. The above thesis lacks either logical support or citation from the Agreement. Article II, 6(g) and Note to Rule 5 provides for no exceptions. The Carrier was discharging its obligations under the agreement in giving the Claimants, on their birthday, a day off with pay. However, when Carrier found that work had to be performed, which would have been performed by Claimants had they been at work, and when Carrier assigned that work to other employes, it denied the three Claimants what was their right under the Agreement.

Note to Rule 5 provides in the first instance for a procedure to deal with the situation where some men are off on their "regular holidays" and some men are needed by the Carrier. In essence the procedure requires that the local Committee be notified of the number needed; the local Committee furnishes the names of those who will work from among those who would work the shift on which the holiday falls; the list of men so assigned is posted 5 days prior

to the holiday; those so assigned will protect the work; in the event no sufficient men are listed, junior men are to be assigned, the most junior first. The reasons behind the above procedures, as well as such agreed on variations as furnishing men for work, on one of the seven regular holidays, from a rotating overtime Board are obvious.

As noted previously, Carrier has construed Note to Rule 5 as not being applicable to birthday holidays. But Carrier also misconstrued its clear meaning, as described above, when applying Note to Rule 5 in the instant claims.

Carrier's brief correctly states (page 8 of Carrier's Brief in Docket 5958) that:

> ". . . Carrier is not obligated to require (Brooks) to work on the seven recognized holidays nor is the Carrier obligated to require him to work on his birthday holiday."

The above citation is accurate to the extent that it states what the Carrier is **not** required to do. However, the issue in the instant claims is the extent of Carrier's positive obligations, not on one of the seven regular holidays but on a birthday holiday. Carrier's obligation is to implement Note to Rule 5, i.e., assign work that needs to be performed on a birthday holiday to those employes who, were it not their birthday holiday, and were they not assigned, would have been there to perform it.

The Board noted previously, that there exists variants to Note to Rule 5. These variants take the form of local agreements to use a rotating Overtime Board to meet Carrier manpower needs on holidays, and to allocate among a group of employes, who shall work on each of the seven regular holidays and who shall be "off" on that holiday.

Such variants have a sound and obvious justification, namely to distribute as fairly as possible the benefits of working on a holiday among those who so wish to work.

However, the above in no way whatsoever erodes the right of an employe, who may be assigned off on his **birthday holiday**, whose job, position or assignment is not blanked, but whose job position or assignment is filled by some other employe who in fact performs the work the employe on birthday holiday would have performed had he been at work, to justly claim that Carrier has deprived him of a right clearly established in Note to Rule 5.

The Board has gone to considerable lengths in its opinion solely for the purpose of putting to rest the issues considered herein, and thus permitting avoidance of further future adjudication of what appears to be a relatively straight-forward matter of contract administration.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

Keenan Printing Co., Chicago, Ill. **Printed in U.S.A.**