



Award No. 6115
Docket No. 5958
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 EMPLOYEES'
DEPARTMENT, AFL-CIO (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 Carman C. J. Collins, Little Rock, Arkansas, the right to work his regular assignment on December 29, 1968.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Collins in the amount of eight (8) hours at the punitive rate for December 29, 1968.

EMPLOYEES' STATEMENT OF FACTS: Carman C. J. Collins, herein after 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 No. SR-6 as carman on the spot rip No. 502 and No. 503 rail, work week Sunday through Thursday, rest days Friday and Saturday, assigned hours 7:00 A. M. to 3:00 P. M.

The claimant's birthday occurred on December 29, 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 29, 1968) and Carman J. F. Dorsey who is assigned by bulletin to Job No. 62, work week Wednesday through Sunday, rest days Monday and Tuesday, assigned hours 7:00 A. M. to 3:00 P. M., was moved 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.

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

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 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 employee 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.

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 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.

The same identical issue was included in Award 6113 and this claim is sustained for the same reasons.

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.

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