

Award No. 6179
Docket No. 6058
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 H. F. McDonald the right to work his regular assignment on March 1, 1969.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman McDonald in the amount of eight (8) hours at the punitive rate for March 1, 1969.

EMPLOYEES' STATEMENT OF FACTS: Carman H. F. McDonald, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Kansas City, Missouri. Claimant is assigned by bulletin to the spot rip with work week Thursday through Monday, rest days Tuesday and Wednesday, hours 7:00 A. M. to 3:00 P. M.

The claimant's birthday occurred on March 1, 1969, and he was instructed that his job would not work this date account it being his birthday holiday. However, the carrier found it necessary to fill this position on this date (March 1, 1969) and Carman Welder C. W. Gimple, work week Wednesday through Sunday, rest days Monday and Tuesday, 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.

"The Local Committee then determines who is entitled to work on the basis of the holiday overtime board and the men so designated are required to work on the holiday. This is the procedure set forth in the Note to Rule 5."

In preparing the docket in that case the Carrier did not realize that there would be a dispute between the parties as to the practice of selecting an employe to work on the seven recognized holidays for the 20 years since the Note to Rule 5 became effective on September 1, 1949. The carrier offered no proof of the statement quoted above in the docket which resulted in Award 5236. Your Board would not accept the above quoted statement as factually correct and based its decision on the allegations of fact by the employes. We have now offered proof in this docket that the statement quoted above is correct. Since Award 5236 is based on incorrect facts, the Carrier is entitled to reconsideration of the merits of the dispute based on the correct facts. The carrier, therefore, urges your Board to reconsider the issues in dispute based on the facts as proven by the carrier in this docket. We believe your Board will then come to the same conclusion that was reached in Awards 5424, 5534, 5639 and 5844, and dismiss or deny the claim.

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.

In the interests of economizing, the Board, with the consent of the parties, is combining Dockets 6057, 6058, 6059 and 6061. For the reason that while the claimants are different, their grievances are the same. It is further noted that in these four dockets the same carrier and organization are involved, and that the same clauses, rules and issues are presented for decision.

Because the fact situation, clauses, rules and issues are the same as Award 6113, and because Award 6113 is controlling, the Board is sustaining the grievances.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1971.

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