Award No. 6201
Docket No. 6052
2-PCT(PRR)-BK-'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.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 1**
**(Formerly System Federation No. 152)**
**RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Blacksmiths)**

**PENN CENTRAL TRANSPORTATION COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the Current Agreement, as amended by the November 21, 1964 National Agreement, when they failed to compensate Blacksmith S. T. Yanizeski eight (8) hours pay for his Birthday, August 12, 1966.

2. That accordingly, the Carrier be ordered to compensate the above named Employe eight (8) hours pay at the applicable pro rata rate.

EMPLOYES' STATEMENT OF FACTS: Blacksmith S. T. Yanizeski, hereinafter referred to as the claimant, is regularly assigned employe at the Pitcairn Enginehouse, Pitcairn, Pennsylvania with rest days Saturday and Sunday. He was on his regularly assigned Vacation, August 7th through August 13, 1966, and his Birthday was Friday, August 12, 1966.

The former Pennsylvania Railroad, hereinafter referred to as the carrier, has issued instructions that when a birthday falls on a vacation day of the regular vacation period of an employe, such birthday-holiday will be considered as one day of vacation. This is confirmed by Enginehouse Foreman H. R. Bryan in his letter of October 31, 1966.

The vacancy created by this claimant being on vacation was not filled by a vacation relief employe.

This dispute has been handled with all carrier officials designated to handle such disputes, including the highest designated Officer of the carrier, with the result that they all declined to make saisfactory adjustment.

The agreement effective April 1, 1952, as subsequently amended particularly by the November 21, 1964 Agreement, is controlling.

The Carrier has established that no provision of the applicable agreements has been violated and that the claimant is not entitled to the additional compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

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.

This is a claim on behalf of S. T. Yanizeski for eight (8) hours pay for his birthday, which fell on August 12, 1966, when claimant was on his regularly assigned vacation August 1 through August 13, 1966.

Award No. 5981 (Dorsey) is comprehensive, definitive, conclusive and controlling, and the Board sustains the instant claim on the grounds set forth in said Award.

This Board views Award 5981 as definitive, in the sense that it definitely interprets and applies the pertinent provisions governing in the instant claim.

In addition, it constitutes a masterful analysis of virtually all preceding Awards.

In previous Awards this Board, with this Referee sitting, has highlighted the urgent need to minimize repetitious adjudication of matters already dealt with definitively by the Board. Res judicata is not strictly applied in ad hoc grievance arbitration, because it cannot be. Nonetheless, arbitrators generally give great weight to previous awards construing contract language, as does this Board. Under the existing Adjustment Board procedures there does not exist a procedure, as perhaps there ought, to meet the need to minimize contradictory awards and maximize the conformance of "new" Awards to prior Awards.

This critical need for Referees, and Boards, to give the highest consideration and greatest possible weight to prior Awards, is grounded on the premise that it will permit the parties, all the parties, across the country to be supplied with a unitary body of decisions permitting uniform administration of the rules and clauses of the agreements. National agreements, national unions, and nation-wide carriers require such unitary interpretation and application of their respective rights and obligations so contract administration can be a simple straight-forward matter, and adjudication and re-adjudication reduced to a minimum.

This Boards holds Referee Dorsey in the highest esteem, particularly because of the comprehensive and cogent preparation of Award 5981. However, while this Board finds the conclusion on the substantive issue in Award 5983 sound, it finds it impossible to accept the reasoning on which it is based, i.e. "that of the eight awards issued as between the particular carrier and particular organization, parties to the dispute in No. 5983, because the last five (awards) have sustained, that the objectives of the Act will be best served by sustaining (this) claim."

Referee Dorsey in Award 5985 denied a claim similar as that presented in 5981 and 5983, essentially for the reason that between the particular disputants, there existed some twenty denial awards.

Award 5904, with Referee Stark participating, a Referee of outstanding ability, denied an identical claim, stating in summary that "where there are conflicting Awards on the same property, the predominant ones will be deemed controlling."

There probably remains only a handful of claims similar to the instant claim presented here that are in various stages of perfection. Because the governing language has been changed there will probably be no future claims. Thus, this Board sees the substantive issue as being of considerably less significance than the precept advanced in 5983, i.e., that numerical superiority of denial awards or of sustaining awards, as between a particular carrier and a particular organization, is to be and to become the decisive factor in determining the outcome of future disputes between said pair of disputants over interpretation of the same rule or clause.

It is because this Board sees such a formula, while undoubtedly designed to deal with a most vexing and troublesome problem, as having grave negative consequences, only two of which are summarily indicated herein, that it cannot adopt it.

First, if Adjustment Boards adopt his doctrine as a guide, it virtually guarantees adjudication ad infinitum. For example, Company X, and Organization Y, have dispute number "one," over a rule or clause, which becomes deadlocked and the dispute is referred to a Board, which in turn issues an award sustaining the grievance. On the other hand, Company X-1, and Organization Y-1 have a dispute on the same issue, which for them is also a "first." Said dispute then becomes deadlocked and is referred to the Board for decision, and the Board issues in this instance a denial Award.

Thus, given the vigor and energy which the parties expend in utilizing the adjudicatory processes of the Adjustment Board, the same issue will then be adjudicated until all possible combinations of carriers and organizations have "had a try at it," each rightfully relying on the outcome of the two hypothetical, yet contradictory Awards referred to above.

This tragic consequence would eventuate, even if the second Award affirmed, for the reason that each other possible pair of disputants contains as it must, one who regards himself as the "loser" vis-a-vis the first award. Under this doctrine, and when a dispute is a "first," as between each successive pair of disputants, the "loser," seeing a chance of obtaining a reversal, and given the propensity and tradition of adjudication characteristic of this

bargaining relationship, will take those steps essential to processing a claim to the Board.

Furthermore, the very existence of a "first award," as between two particular disputants, given the history of litigation under the Adjustment Board, it is suggested, will galvanize if not provoke some party somewhere, who is on the "losing side," to undertake the steps prerequisite to re-adjudication.

Thus, in summary, the doctrine enunciated in 5983, despite its genuinely worthy objective, namely to minimize re-adjudication of the same issue, will produce opposite results, namely the unleashing of an avalanche of disputes, deadlocks, and Awards.

The second consequence of the concept postulated in Award 5983, it is believed, will deny the clear, present and vital need to all Carriers and all Organizations signatory to these agreements, the valuable and essential purpose of third party participation in the settlement of labor-management disputes, **namely that a clause or rule once adjudicated is finally and irrevocably "put to rest."**

The parties need this "finality" so that each may instruct and direct their respective constituents throughout their respective far-flung institutions, that the interpretation or application of a Rule or Clause has been settled, "once and for all," and with it the rights and obligations of the parties defined with clarity and precision. Thus, administration of the rules and contracts can proceed uniformly and systematically, with a minimum of friction and contention.

Surely this is a troubled industry. Its success means a great deal to the nation and all directly concerned. Correlatively, its lack of success can only have harmful consequences to these many interests. As this transportation mode strives to cope with its eminently successful competitors for freight, it needs maximum stability in the labor-management relationship, especially on the shop floor, in the offices and in operations, **on day-to-day problems as they arise.**

The search for a procedure that assures that disputes, when adjudicated, are finally adjudicated, "put to rest" ought continue. This Board is grateful for the effort expressed in 5983 to cope with this knotty issue. While we admire the goal defined therein, and while we admire the ingenuity displayed, we see it primarily as a first step toward the solution, valuable because it places the entire matter in the forefront, and because it is provoking thought in many quarters which if continued will surely and ultimately result in the development of a procedure to minimize the possibility of contradictory Awards on the same rule or clause.

For all of the above reasons, and not because this Board believes the substantive issue is all that vital, we have concluded that it would be a disservice to the parties to lend weight and support to the doctrine set forth in Award 5983, and finally because we are sincerely convinced it contains far reaching adverse consequences, we cannot concur with it.

The contractual rights and obligations of the parties have been determined with admirable precision in Award 5981, and this Board is sustaining the instant claim on the grounds set forth in 5981.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.

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