

**Award No. 6202
Docket No. 6060
2-CRR of NJ-BM-'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. 72, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Boilermakers)**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Current Agreement, as amended by the November 21, 1964 National Agreement, when they failed to compensate Boilermaker Joseph Lessak eight (8) hours pay for his Birthday, August 27, 1965.

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

EMPLOYEES' STATEMENT OF FACT: Boilermaker Joseph Lessak, hereinafter referred to as the claimant, is a regularly assigned employee at the Elizabethport Shops, Elizabeth, New Jersey, with rest days Saturday and Sunday. He was on his regularly assigned vacation, August 23rd through August 27, 1965.

The Central Railroad Company of New Jersey, 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 employee, such birthday-holiday will be considered as one day of vacation. This is confirmed by Shop Superintendent F. P. Neesley in his letter of September 22, 1965.

The vacancy created by this claimant being on vacation was filled by a vacation relief employee.

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 satisfactory adjustment, as evidenced by record of handling on the property.

The agreement effective March 16, 1937, as corrected August 1, 1962 and as amended particularly by the November 21, 1964 agreement, is controlling.

employees will not receive additional pay when a holiday occurs during their vacation on what ordinarily would be a workday. See Second Division Awards 2277, 2302, 3477, 3518 and 3557 as well as Awards 9640 and 9641 of the Third Division."

In further support of these findings, respondent cites findings of Referee Harold Gilden, in Second Division Award 5898, when he said:

"Finally, it would appear that the negotiating of the Agreement dated September 2, 1969 (effective January 1, 1968), further amending Article II of the Agreement of August 21, 1954, as amended, (Article II, Section 6, of the Agreement of November 21, 1964) to provide for the payment of holiday pay in addition to vacation compensation whenever the birthday holiday falls during an employee's vacation period, is at least some indication that this increment had not been contemplated by Article II, Section 6, of the November 21, 1964 Agreement."

In view of the analysis and reasoning set forth herein, Carrier submits that the claim of the Brotherhood, which has been discussed in conference and handled by correspondence on the property, should be dismissed or denied in its entirety.

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.

This is a claim in behalf of Joseph Lessak for eight (8) hours pay for his birthday, which fell on August 27, 1965, when claimant was on his regularly assigned vacation, August 23 through August 27, 1965.

The carrier paid claimant eight (8) hours pay for August 27, 1965 by virtue of the fact that claimant was on vacation and was contractually entitled to said compensation.

Carrier in the course of responding to the instant claim and on November 9, 1965, then paid claimant an additional eight hours pay at the punitive rate (time and one-half) or twelve (12) hours pay because claimant's position was filled on that day, i.e. August 27, 1965. Such claim was paid by carrier pursuant to the vacation clause.

The organization in behalf of claimant continues to seek in the instant matter what they believe claimant is entitled to receive pursuant to the then existing birthday holiday clause, Article Two of the November 21, 1964 agreement.

Adjudication of this issue of birthday holiday payments has been prodigious and the Board has reviewed the pertinent Awards. Award number 5981 (Dorsey) is definitive, conclusive and controlling, and the Board sustains the instant claim on the grounds set forth in said award and on the grounds set forth in Award 6201, (Docket 6052).

The above finding is not only contractually warranted, but it is contractually mandatory, despite the apparently anomalous result, namely an employe receiving three and one half days pay for one day, a result not legislated by the Board but rather one grounded on the calendar, work assignments and contract language.

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.