

Award No. 6260

Docket No. 6106

2-MP-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

"1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Carman Welder C. J. Collins, North Little Rock, Arkansas, the right to work his regular assignment on December 29, 1969.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Welder Collins in the amount of eight (8) hours at the punitive rate for December 29, 1969."

EMPLOYEES' STATEMENT OF FACTS: Carman Welder C. J. Collins, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at North Little Rock, Arkansas, and is assigned by Bulletin #68 as carman welder on #505 rail of New Spot Rip, work week Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A.M. to 3:00 P.M.

The claimant's birthday occurred on December 29, 1969, and he was instructed by bulletin not to report for 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, 1969), and Carman R. E. Davidson who is regularly assigned by bulletin to vacation relief Job #4, that of filling vacations, work week Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A.M. to 3:30 P.M., was moved from his regularly assigned job to fill the Claimant's job on this date and to substantiate this fact the Employees wish to quote Local Chairman, Mr. T. S. Daniels' letter of February 23, 1970, addressed to Master Mechanic, Mr. J. W. Dent, reading:

"February 23, 1970

Mr. J. W. Dent
Master Mechanic
North Little Rock Service Track
13th & Locust St.
North Little Rock, Arkansas

the same conclusion that was reached in Awards 5224, 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.

The Carrier urges reconsideration of the principles set forth in our Awards 5236, 5523, 5955, 5975, 5976, 6087, 6088, 6089, 6090, 6094, 6095, 6096, 6097, 6098, 6113, 6114 and 6115.

Article II, Section 6(g) of the Mediation Agreement of November 21, 1964 sets forth:

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

By Agreement dated June 1, 1970, the parties hereto provided:

"Rule 5.9a) Employes assigned to rest day relief positions and/or holiday work, or those called to take the place of such employes, will be allowed to complete the balance of the day unless released at their own request. Those called will be advised as soon as possible after vacancies become known * * *

NOTE: Notice will be posted five (5) days preceding a holiday listing the names of 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. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employes to complete the requirements, the junior men on each shift will be assigned beginning with the junior man." (Emphasis ours.)

The above quoted language is clear on its face and under the basic principles of law, we have no authority to look behind it nor are we permitted to consider understandings or conditions existent prior to the time the Agreement was executed.

In view of the fact that we have consistently held that under the fact pattern which is the basis of the claim herein and on which there is no disagreement, Petitioner will be sustained, the Carrier is improperly seeking relief from what it contends have been erroneous rulings on our part by appeals to this tribunal. We have stated in Awards too innumerable to cite that the National Railroad Adjustment Board is not empowered to amend, modify, change or add to the agreements entered into by the parties. The Railway Labor Act

affords the Carrier adequate means to seek revision of the language which has been found to require it to perform with reference to holiday work in a manner not to its liking.

We urge that the Carrier read a recent Award 6177 (Simons) in which we strongly express our discontent with repeated impositions upon this Board to reiterate established principles covering certain sets of fact. Therein we stressed our holding in Award 6113 to the effect that chaos could be the consequence of the failure of the parties and the Board to recognize the impact and role of our previous Awards in disputes involving the same parties, same rule and similar facts.

Nothing placed before us in the instant dispute warrants our reversal of our decisions, cited hereinabove.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1972.