

Award No. 6261
Docket No. 6112
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 J. E. Smith, Houston, Texas, the right to work his regular assignment on April 6, 1970.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Smith in the amount of eight (8) hours at the punitive rate for April 6, 1970, and in addition to the money amounts claimed herein, the Missouri Pacific Railroad shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

EMPLOYEES' STATEMENT OF FACTS: Carman J. E. Smith, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Houston, Texas, assigned by bulletin as leadman and record writer on the cleaning track, work week Sunday through Thursday, rest days Friday and Saturday, assigned hours 7:00 A. M. to 3:30 P. M.

The claimant's birthday occurred on Monday, April 6, 1970, and in line with list posted showing the names of employees whose birthdays were scheduled in April who would not work on their birthday, the claimant did not report for work on his birthday, April 6, 1970. However, the claimant's job was not blanked on this holiday but was worked by Carman M. A. Smith who was moved off his regularly assigned job by Foreman J. O. Johns and sent to the cleaning track to fill the claimant's position on this date (April 6, 1970). Carman M. A. Smith while performing claimant's assignment on the cleaning track instructed the laborers on which cars to sweep or wash, instructed the carmen on which cars to upgrade and repair, wrote up the bills on the mechanical repairs, classified the cars, carded the cars and made the

"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 7 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. North Little Rock was used to illustrate the point, but the same is true of Houston and all other shop locations. 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.

Once again Carrier, by refusing to adhere to our findings and rulings in Awards 5236, 5523, 5955, 5975, 5976, 6087, 6088, 6089, 6090, 6094, 6095, 6096, 6098, 6113, 6114, and 6115, has compelled us to review a dispute between the same parties, involving the same contract Rule and a similar set of facts as dealt with in the cited cases.

Our Award Docket 6106, adopted this day, is fully applicable hereto. There is nothing in the record herein to distinguish this case from those cited herein-above and to the extent that it is consistent therewith the claim will be sustained.

This claim, in addition to demanding eight hours pay at the punitive rate for Claimant, (the remedy we have, previously granted in like circumstances), requests that we require the Carrier to pay interest from the date of the violation of the contract until the claim is paid. The several Divisions of the Board have given extensive consideration to such requests. Except for special circumstances, which do not appear in the dispute before us, it has been well established that interest does not accrue on a contested and unliquidated claim arising under a collectively bargained agreement, until the matter has been adjudicated in accordance with the terms of the Controlling Agreements. See Awards of Second Division: 2675, 5467, 5672, 5818; First Division: 13098, 13099, 12989; Third Division: 8088, 11172, 13478, 15709, 18464, 18627, 18660 and Fourth Division: 2368.

In our Award 6260 and Awards cited therein we indicated our hope that parties will recognize certain cogent principles arising out of our rulings and avoid burdening the procedure with matters on which a clear and definitive body of decisions should guide them as to the ultimate result and therefore enable them to resolve more of their differences on the property.

The decisions with reference to interest, cited above, being controlling, we are denying that part of the claim herein.

AWARD

Claim sustained to the extent indicated in the Findings.

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.