Award No. 6276
Docket No. 6114
2-AT&SF-MA-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY — EASTERN LINES

DISPUTE: CLAIM OF EMPLOYES:

1. That the Atchison, Topeka and Santa Fe Railway violated the provisions of Article II, Section 6 of the February 4, 1965 agreement when it arbitrarily and improperly deducted four (4) hours pay at pro rata rate from the last half November 1969 payroll checks of the following named employes of the Machinist Craft at Argentine Shops in Kansas City, Kansas.

Claimant	Date of Claim	Amount Deducted
R. M. Rose	1-01-68	$13.32
W. C. Whitney	1-01-68	13.32
S. A. Stowers	1-01-68	13.32
G. E. Showalter	1-01-68	13.32
K. Neeley	1-01-68	13.32
C. Guerra	1-01-68	11.60
G. L. Bremenhamp	1-01-68	11.84
J. E. Miller	1-01-68	13.32
J. A. Kannapel	1-01-68	13.32
N. R. Powell	1-01-68	13.32
C. L. Mamie	1-01-68	13.32
H. M. Forse	2-22-68	13.32
A. J. Rebar	2-22-68	13.32
C. H. Barr	2-22-68	13.32
A. A. York	2-22-68	13.56
J. P. Delich	2-22-68	13.32
W. C. Horton	2-22-68	13.32
D. M. Lammons	2-22-68	13.32
N. F. Millsap	2-22-68	39.96
W. C. Whitney	2-22-68	13.32
G. J. Gaches	2-22-68	13.32
I. L. Martin	2-22-68	13.32
R. F. Good	2-22-68	13.56

Claimant	Date of Claim	Amount Deducted
J. Amayo	2-22-68	13.32
R. L. Beach	2-22-68	13.32
D. J. Sarbaugh	2-22-68	13.32
E. R. Hamilton	2-22-68	13.32
J. L. Ingalls	2-22-68	13.32
B. J. Pratt	2-22-68	13.32
F. A. Thomas	2-22-68	35.51
W. J. Sayles	2-22-68	11.60
W. Block	2-22-68	13.32
R. L. Beach	5-30-68	13.52
W. D. Card	5-30-68	40.56
C. P. Weaver	5-30-68	40.56
D. J. Sarvaugh	5-30-68	13.52
W. H. Block	5-30-68	13.52
E. M. Hogan	5-30-68	13.52
F. A. Thomas, Jr.	5-30-68	11.84
J. O. Ellison	5-30-68	40.56
R. F. Good	5-30-68	13.52
J. Amayo	5-30-68	13.52
N. D. Kelley	5-30-68	26.64
J. Arellano	5-30-68	13.52
D. M. Kennedy	5-30-68	13.52
D. B. Nail	5-30-68	13.52
J. Fuentez	5-30-68	11.84
R. H. Witt	5-30-68	13.52
T. R. Hopkins	5-30-68	13.52
A. A. York	5-30-68	13.52
G. E. Littlejohn	5-30-68	40.56
L. O. Head	5-30-68	13.52
J. P. Delich	5-30-68	13.52
W. C. Whitney	5-30-68	13.52
W. C. Horton	5-30-68	13.52
D. M. Lammons	5-30-68	13.52
N. F. Millsap	5-30-68	13.52
E. R. Hamilton	5-30-68	13.52
J. S. Carpenter	5-30-68	11.60
J. Amayo	7-04-68	14.20
J. Fuentez	7-04-68	12.42
R. L. Beach	7-04-68	14.20
C. L. Higbee	7-04-68	14.20
D. J. Sarabaugh	7-04-68	14.44
R. V. Elliott	7-04-68	12.18
R. A. Carey	7-04-68	14.20
I. L. Martin	7-04-68	14.44
W. C. Whitney	7-04-68	14.20
W. W. Little	9-02-68	14.20
J. H. Walls	9-02-68	14.20
B. Wrzsien	9-02-68	14.20
J. A. Kannaple	9-02-68	14.20
G. H. Coggs	9-02-68	14.20
C. L. Mamie	9-02-68	14.20
A. V. Paulsen	9-02-68	14.20
G. E. Showalter	9-02-68	14.20
K. Neely	9-02-68	14.20
G. L. Bremenkamp	9-02-68	12.42

2. That accordingly the Atchison, Topeka and Santa Fe Railway Company be ordered to reimburse the above named employes an amount of money improperly deducted from their payroll checks.

EMPLOYES' STATEMENT OF FACTS: The above listed employes of the Machinist Craft, hereinafter referred to as claimants, are regularly employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, in its Mechanical Department facility at Kansas City, Kansas, with varying work week and shift assignments.

There is a considerable amount of important background information that must be included in this submission in order that instant dispute-claim, its causes and implications, be fully understood.

The claim has its beginnings in the application of Article II of the February 4, 1965 Agreement — copy of which is on file with this Division — as relates to legal holiday wage payments caused by working assignments on birthday-holiday, rest day-holiday, and birthday-vacation pay aspects thereof. As will be noted from the foregoing, rest day-holiday assignments of claimants in the instant action were confined to New Year's Day, Washington's Birthday, Memorial Day, 4th of July and Labor Day in the year 1968.

Subsequent to February 4, 1965, the Employes representatives were compelled to initiate a large number of claims in order effected crafts' personnel be made whole wage-wise in conformity with proper application of pertinent provisions of aforesaid agreement.

A pilot claim, that of Machinist J. H. Walls and nine (9) others and Machinist Heleper R. Ramirez at Kansas City, Kansas, wound its way through the maze of agreement handling procedures and onto the 2nd Division, N.R.R.A.B. That case, identified as Docket No. 5405, ultimately resulted in a sustaining decision being handed down in Award No. 5603.

Claims on behalf of several hundred claimants involving rest day-holiday service were initiated at many local points System-wide but were, during the process of appeals, left pending with time limits suspended by mutual consent at various levels of handling; usually at the General Managers' level.

As a direct result of Award No. 5603 this representative petitioned management to grant payment of claims pending. Following a considerable exchange of correspondence, pro and con, the carrier finally agreed to pay all pending claims, which they did, although the dates of payment varied dependent upon the particular General Manager's arrangements.

Claims filed between February 4, 1965 and December 31, 1968 were settled on the basis of payment of twelve (12) hours additional compensation at pro rata rate to each claimant for each infraction of the February 4, 1965 holiday rules agreement.

Although payment was made on all such claims initiated between the aforementioned dates, identical type claims initiated subsequent to December 31, 1968 were left unsettled by the carrier; it ostensibly awaiting disposition of Employes Section 6 Notice resulting in the September 2, 1969 Mediation Agreement, copy of which is on file with this Division.

On October 22, 1969, the carrier addressed communication, identified as Employes Exhibit "A," to all System Federation No. 97 General Chairmen

National Agreement granted increased vacation entitlements "effective with the calendar year 1954" which applied to any vacation earned prior to 1954 that was effective that calendar year. The pertinent portion of that Award reads as follows:

> "We desire to point out that the amendment of Section 1 (c), Article 1, Vacation Agreement of December 17, 1941, does not provide that it becomes effective January 1, 1954 as contended by the carrier. This misconception is based on the words 'effective with the calendar year 1954.' Of course, the calendar year 1954 commenced on January 1, 1954. But the meaning of the words 'effective with the calendar year 1954' is that any earned vacation for the calendar year 1954 shall be fifteen (15) days under this section. Consequently when claimant had earned a vacation for 1954 as provided by Section 1 (c), he was entitled to fifteen (15) days' vacation or the equivalent thereof in money. The retroactive feature applies to any vacation earned for 1954 and not to employes in the service of the carrier on January 1, 1954, as the carrier contends. By interpreting the vacation agreements to mean that an employe retiring in 1953, after working one hundred and thirty-three (133) days of compensated service, is entitled to a vacation earned for 1954, it thereby follows that the vacation or vacation pay earned for 1954 is fifteen (15) days or the equivalent thereof in money. The fact that the payment was accelerated for the vacation earned for 1954 to a date in advance of January 1, 1954, cannot have the effect of reducing the vacation period or the vacation pay in lieu thereof for the calendar year 1954. Of course, there was but ten (10) days' pay due on December 1, 1953, but an additional five (5) days' pay became due when the agreement of August 21, 1954 was negotiated and made retroactive for the year 1954. **This is no different than any other agreement providing for retroactive pay increases.**" (Emphasis ours.)

See also Second Division Awards Nos. 2152-2162, 2231-2237 and many others.

The effect of your Boards' Awards is that retroactive adjustments in these National Agreements are expected to be applied either by (1) granting additional monies flowing from increased benefits contained in such Agreements or (2) re-collecting overpayments due to diminished benefits negotiated into such Agreements.

The Claimants were overpaid in error. Since there is no rule in the current Shop Crafts' Agreement denying the Carrier the right to deduct overpayments made in error and under the provisions of the September 2, 1969 Agreements the proper payments were specified, with retroative application, the Carrier was within its right to make the adjustments and the instant claim must be denied. Please see Third Division Awards Nos. 9117, 9581, 15067, 16920 and others.

In conclusion, the Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or Agreement support and, therefore, requests that said claim be denied.

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.

This is a dispute revolving around our Award 5603 issued and published on the 17th day of December, 1968. In that case, a number of Machinists worked for the Carrier on May 31, 1965 (Decoration Day) a legal holiday as well as the claimants regularly assigned rest days. They requested this Board to additionally compensate them twelve hours (12) each at the pro rata rate, the equivalent o feight (8) hours at the punitive rate for work performed on one of their regularly assigned rest days, May 31, 1965. Each claimant had already been compensated twelve hours pay at the pro rata rate for service performed on the holiday. Thus, in effect, they were demanding double pay or a total of 24 hours pay at the pro-rata rate for service on a holiday and an assigned rest day. The Board sustained those claims and payments were made to the claimants and other employes who were in the same category. These latter employes did not submit a claim, but were paid by Carrier because of the decision rendered in Award 5603.

On the 2nd day of September 1969, a Mediation Agreement was signed by the parties, and our attention is directed specifically to Article II, Section 4 thereof which reads as follows:

> "Section 4. Section 5 of Article II of the Agreement of August 21, 1954 and paragraph (g) of Section 6 of Article II of the Agreements of November 21, 1964 and February 4, 1965 (amending Article II of the Agreement of August 21, 1954 to provide for birthday-holidays) are hereby amended to read as follows:
>
> > Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on a holiday are not changed hereby **except that under no circumstances will an employe be allowed, in addition to his holiday pay, more than one time and one-half payment for service performed by him on a holiday."**

The above provision of the Mediation Agreement along with other provisions was retroactively effective to January 1, 1968. Carrier, as a direct result of this Agreement, advised by letter the various Organizations, including the Petitioner that certain adjustments in pay would be made. Carrier thereupon made deductions from the Claimants' pay, that is from those claimants who had been paid the additional 12 hours in accord with the decision rendered in Award 5603.

Thus we have on the one hand Award 5603, published December 17th, 1968 granting double pay and on the other hand, we have the Mediation Agreement, quoted above, negating double pay effective January 1, 1968.

In the field of industrial relations, when opposing factions, Management and Labor, can sit across the bargaining table and after exhaustive negotiating can reduce their mutually understood agreements to writing, such agree-

ments must be respected without question because simply stated, they are the best evidence of the intent of the contracting parties. Double pay by the terms of the Mediation Agreement was eliminated effective January 1, 1968. Carrier had every right to make the deductions because the terms of the Mediation Agreement superseded the decision rendered in Award 5603. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1972.

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