

**Award No. 4163
Docket No. 4141
2-P&LE-TWUOA-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA,
RAILROAD DIVISION, A. F. of L. — C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
and
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

Coach Cleaner, Joseph Kirsch, was on vacation for one week January 2nd through January 6th, 1961. His relief days are Saturday and Sunday. January 2, 1961 was a holiday according to our agreement and being that January 2, 1961 was a Monday and a work day for Joseph Kirsch, he should have been paid two and a half days' pay for this day. On January 24, 1961 when Joseph Kirsch received his pay draft he was only paid one day at the pro-rata rate for January 2, 1961. The matter was called to the attention of Foreman Koger and he said that was all Joseph Kirsch was entitled to in pay for January 2, 1961. We feel that the Foreman is wrong in this matter and being that Joseph Kirsch was paid only one day at the pro-rata rate for this date we are asking that he be paid eight (8) hours at the punitive rate for January 2, 1961 in accordance with the agreement. Enclosed is cut-off notice of jobs that did not work on January 2, 1961 and Joseph Kirsch's name does not appear on it, also there were two younger Coach Cleaners than Joseph Kirsch that worked on this day.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Pittsburgh, Pa., and is known as Case PS-55.

Joseph Kirsch held a coach cleaner's job with rest days Saturday and Sunday.

January 1, 1961 was New Year's Day but according to our agreement since January 1, 1961 was a Sunday the holiday was observed on January 2, 1961 which was a Monday.

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board:

CONCLUSION

Carrier has shown that Claimant Kirsch's position was not worked on January 2, 1961. Carrier has also shown that Claimant Kirsch was properly paid on January 2, 1961. It has also been shown that carrier has the right to blank vacation vacancies when no burden or hardship is cast upon the remaining employes. Carrier has shown that the blanking of Claimant Kirsch's assignment on January 2, 1961 was within the rights granted under Article 6 of the National Vacation Agreement of December 17, 1941. It has also been shown that the Agreement does not support the claim for punitive rate as of January 2, 1961, while claimant was on vacation.

Awards of the Second and Third Divisions of the National Railroad Adjustment Board have been cited in support of carrier's position. The claim is without merit and should 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 were given due notice of hearing thereon.

The Claimant, Joseph Kirsch, held a regular coach cleaner's assignment Monday through Friday with Saturday and Sunday as relief days at the Carrier's Pittsburgh Station, Pittsburgh, Pennsylvania.

The Claimant vacationed from Monday, January 2, 1961 through January 6, 1961. Under the terms of the controlling Agreement, Monday, January 2, 1961, was a holiday.

The Organization contends that the Claimant's position worked the holiday, because two employes junior to the Claimant worked on that day. Accordingly, the Organization contends that the Claimant should have received two and a half days' pay for January 2nd instead of eight hours at pro-rata pay.

The Carrier contends that the Claimant's position was blanked during each day of his vacation and, therefore, his position could not have worked on January 2nd.

There is a conflict of facts as to the date on which the Local Chairman gave the Carrier's General Foreman the vacation list. The Organization contends that the vacation list was given to the Carrier on December 19, 1960, and therefore, the Claimant's name should have been included on that list.

The Carrier, on the other hand, maintains that the Claimant was on vacation from January 2 through January 6, 1961; that his position was blanked; and there was no need for his name to be included on the cut-off list, posted by the Carrier on December 28, 1960. The Carrier also asserts that it did not receive the vacation list until after the cut-off list had been posted.

The factual dispute above is not germane to the proper determination of this case but we have introduced it into our discussion merely to provide all the background data.

The Carrier's right to blanket positions is not questioned by the Organization. Nor does the Organization dispute the fact that the Claimant's position was blanked on January 3, 4, 5 and 6, 1961. Consequently, it is, in the Board's judgment, inconsistent for the Organization to assert that the Claimant's position was not also blanked on January 2, 1961, especially when the Organization failed to prove that a junior employe did in fact work the Claimant's position and not her own position on the holiday in question.

Accordingly, the Board rules that this claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.