



Award No. 5241
Docket No. 5052
2-SP(PL)-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(Carmen)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Southern Pacific Company violated Article 2, Section 6, paragraph (G) of the November 21, 1964 Agreement.

2. That accordingly, the Southern Pacific Company compensate Carman M. T. Constabile an additional (8) hours at the rate of time and one-half for having been required to work on his birthday, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman, M. T. Constabile, hereinafter referred to as the claimant, had been assigned as carman, Mission Road Coach Yard, Los Angeles, California, 4 P. M. to 12:30 A. M., with a work week Thursday through Monday, rest days being Tuesday and Wednesday. On Friday, January 1, 1965, a legal holiday and the claimant's birthday, the claimant was required to work his regular assignment for which he was compensated eight (8) hours at straight time rate of pay and eight (8) hours at the time and one-half rate of pay for having been required to work a legal holiday. In addition thereto, claimant was compensated eight (8) hours at straight time rate of pay for having been required to work on his birthday. The claimant's claim for an additional eight (8) hours at the rate of time and one-half for having been required to work on his birthday was denied.

There is no dispute here as to the qualifying requirements set forth in Article 2 of the aforementioned agreement, as the claimant rendered compensated service on Thursday, December 31, 1964 and Saturday, January 2, 1965, the day before and the day after his birthday.

This dispute has been handled with the Carrier's officers designated to handle such matters, in compliance with the agreement, all of whom have refused or declined to make satisfactory settlement.

The Agreement effective November 21, 1964, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is the position of the Employees that the sole question in dispute is: Was the claimant compensated in accordance with the agreement covering rules for service rendered on the date involved?

Rules primarily involved are as follows:

performed on recognized holidays, and any interpretation to that effect in the absence of specific language in the rule would constitute a unilateral unauthorized change in the existing agreement contrary to required procedures necessary under the Railway Labor Act.

CONCLUSION: Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

All data herein have been presented to the duly authorized representative of the employe and are made a part of this particular question in dispute.

Carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the Petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Petitioner in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

Carrier does not desire oral hearing unless requested by Petitioner. (Exhibits not reproduced)

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 claim is precisely like that in Award No. 5237, involving the same Carrier, essentially the same Rules, and the same essential facts, the holiday involved being New Year's Day instead of Washington's Birthday.

Consequently it necessitates the same disposition in accordance with the Third Division and Third Division (Supplemental) awards cited therein.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION
ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1967.