

Award No. 5253

Docket No. 5118

2-MP-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:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they denied birthday-holiday pay to R. A. Shoemake, Carman, Wednesday, June 9, 1965. Houston, Texas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Shoemake in the amount of eight (8) hours for June 9, 1965, his birthday-holiday.

EMPLOYEES' STATEMENT OF FACTS: Carman R. A. Shoemake, hereinafter referred to as the Claimant, was regularly employed by the Missouri Pacific Railroad Company, hereinafter referred to as Carrier, as a Leadman and Record Writer on the Repair Truck, Settegast Yard, Houston, Texas, with work week Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1965 vacation beginning Monday, June 7, 1965. Claimant's birthday was Wednesday, June 9th, a vacation day of his vacation period for which he was paid a day's vacation pay. However, Carrier failed to allow him birthday holiday compensation for the day, Wednesday, June 9th.

Claim was filed with proper officer of the Carrier under date of June 21, 1965, contending that claimant was entitled to eight (8) hours Birthday Holiday compensation for his birthday, June 9th, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective June 1, 1960 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow claimant eight (8) hours birthday

The issues raised by this dispute have been given thorough consideration not only by this Carrier but by the Carrier's Committee that negotiated the Agreement of November 21, 1964. In fact, the particular question raised by this dispute was put to the Committee and the question and the Committee's answer thereto is as follows:

"Q—If the birthday of an hourly, daily or weekly rated employee falls during his vacation period, would he receive another day off or additional pay in lieu thereof.

A—If the birthday falls on a work day during the vacation period, it is to be considered as a work day of the period for which the employee is entitled to vacation under application of Section 3 of Article I — Vacations — of the Nonops Agreement of August 21, 1954. He would not receive another day off or vacation pay in lieu thereof."

Claimants were paid eight hours pro rata for each day while on vacation and are not entitled to any additional compensation.

The Employees ignored the Vacation Agreement in the handling of this claim on the property. The reason is the Vacation Agreement requires a denial of the claim. It follows that your Board must deny the claim.

All matters contained herein have been the subject matter of correspondence and/or conference.

Oral hearing is not requested.

(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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant began his vacation on Monday, June 7, 1965. His birthday was on June 9, 1965 while he was on vacation. He was paid eight (8) hours for each day of his vacation, including June 9, 1965. An employee's birthday is a paid holiday. Employees are requesting an additional eight (8) hours holiday pay for June 9, 1965.

The same issue is fully discussed in Award No. 5251. The principles and conclusions adopted in Award 5251 are here affirmed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5253

The majority's decision to sustain the claim presented in Award No. 5253 is based on the principles and conclusions stated in its findings in Award No. 5251. Accordingly, our dissent to Award No. 5251 is equally applicable to Award No. 5253 and is hereby adopted as such.

C. L. Melberg

F. P. Butler

H. F. M. Braidwood

P. R. Humphreys

H. K. Hagerman

LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NOS. 5251, 5252, 5253, 5254, 5255, 5256, 5257 AND 5258

A dissent which merely expresses the chagrin of the dissenters is of little value. The dissent of the Carrier Members to Award Nos. 5251 through 5258 is such a dissent.

The dissent does nothing but review the arguments presented to the Division which were considered and disposed of in the findings of Award No. 5251.

The findings in Award No. 5251 and the Labor Members' dissents to Award Nos. 5230, 5231, 5232, 5233, 5310 and 5311 point out all of the reasons that Award Nos. 5230, 5231, 5232, 5233, 5310, 5311, 5328, 5329 and 5330 are palpably erroneous. Therefore Award Nos. 5251, 5252, 5253, 5354, 5255, 5256, 5257 and 5258 should dispose of this issue.

D. S. Anderson

C. E. Bagwell

E. J. McDermott

R. E. Stenzinger

O. L. Wertz