Award No. 5256
Docket No. 5130
2-MP-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2 RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the Agreement of February 4, 1965, when they denied birthday holiday pay to H. J. Staubli, Machinist, Tuesday, June 8, 1965, Sedalia, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Staubli in the amount of eight (8) hours for June 8, 1965, his brithday holiday.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a Machine Shop at Sedalia, Missouri where H. J. Staubli, hereinafter referred to as the Claimant, is employed as a Machinist, hours 8:00 A. M. to 4:40 P. M., work week Monday through Friday, rest days Saturday and Sunday.

On June 7, 1965, the Claimant started his vacation and his birthday holiday occurred on Tuesday, June 8, 1965; however, although the Claimant qualified under the Agreement, the Carrier declined to pay his birthday holiday pay, which constitutes the basis of the claim.

This matter has been handled up to and including the highest designated officer of the Carrier who has declined it.

The Agreement of June 1, 1960, as amended, and the Agreement of February 4, 1965, are controlling.

POSITION OF EMPLOYES: That the Agreement of February 4, 1965, particularly Article II, Section 6 (a), (b), and (c), reading:

"ARTICLE II — HOLIDAYS

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily, and weekly

their income was reduced in a week in which a holiday fell. By giving the employes a day's pay for a holiday, an employe was made whole for that week and enjoyed his regular income. When the holiday rule achieved this purpose the negotiating committee quickly realized that an employe absent on vacation was entitled to no more than a day's pay for each day he was absent on vacation. Accordingly, the **Vacation Agreement** was amended in the light of the Paid Holiday Rule so that the Vacation Agreement would be applied in a manner that the employe would not receive two days' pay when a holiday fell during the vacation period. This is the reason for Section 3 of the Vacation Agreement.

When the parties agreed to the addition of the birthday holiday, no change was made in Section 3 of the Vacation Agreement referred to above. The birthday holiday when falling during a vacation period must also be considered as a work day of the period for which the employe is entitled to vacation. This means he is entitled to eight hours pro rata for each day while on vacation and nothing more.

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 February 4, 1965. 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 employe 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 employe 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 Employes 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 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.

Claimant was on vacation from June 7 through July 4, 1965. His birthday was on June 8, 1965. An employe's birthday is a paid holiday. Claimant was paid eight (8) hours for each day of his vacation, including June 8. Employes are requesting an additional eight (8) hours holiday pay for June 8, 1965.

The same issue is fully discussed in Award No. 5152. 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. 5256

The majority's decision to sustain the claim presented in **Award No. 5256** is based on the principles and conclusions stated in its findings in **Award No. 5251**. Accordingly, our dissent to **Award No. 5152** is equally applicable to **Award No. 5256** and is hereby adopted as such.

C. L. Melberg

F. P. Butler

H. F. M. Braidwood

H. K. Hagerman

P. R. Humphreys

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

Keenan Printing Co., Chicago, Ill. Printed in U. S. A.