

Award No. 5257
Docket No. 5138
2-PULL-CM-'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. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Pullman Company violated Article II, Section 5, Paragraph (a) of the December 14, 1964 Agreement.

2. That accordingly, the Pullman Company be ordered to compensate Carman Harold Sager eight (8) hours at the straight time rate of pay or an additional day off with pay, for his birthday, May 19, 1965, while on vacation which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman Harold Sager, hereinafter referred to as the claimant, was regularly employed by the Pullman Company, hereinafter referred to as the Carrier, as a Carman in Carrier's St. Louis Shop, St. Louis, Missouri.

Claimant began his 1965 vacation May 17. Claimant's birthday was Wednesday, May 19, 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, May 19.

Claim was filed with proper officer of the Carrier under date of July 24, 1965, contending that claimant was entitled to eight (8) hours birthday-holiday compensation for his birthday, May 19, 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 who declined to make satisfactory adjustment.

The Agreement effective June 16, 1951, 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-holiday compensation for his birthday May 19, 1965, in addition to vacation pay allowed for the day.

"When any of the recognized holidays, as defined in Article III of this notice, occurs during an employee's vacation period, the following shall apply:

(a) If the holiday falls on a work day of the employee's job assignment in the case of an employee having a job assignment, or on a work day of the position on which the employee last worked before the holiday in the case of an employee not having a job assignment, then:

(1) If such employee is not assigned in any manner to work on the holiday, the holiday shall not be considered as a vacation day of the period for which the employee is entitled to vacation, such vacation period shall be extended accordingly, and the employee shall be entitled to his holiday pay for such day.

(2) If such employee is assigned in any manner to work on the holiday, the holiday shall be considered as a vacation day of the period for which the employee is entitled to vacation and the employee shall be entitled to a straight time day's pay plus pay at the applicable overtime rate for the job assignment to work on such holiday."

Obviously, if the Organization believed it already had won the principle of considering a holiday falling on a workday within the work week of one of its members who is on vacation as other than a vacation day, the Organization would not be serving such a demand at this time.

The Board's attention is called to the fact that the instant dispute is a key case, behind which numerous similar disputes have been lined up with intent to dispose of them on the basis of the ultimate decision in this case.

CONCLUSION: The Pullman Company has shown in this submission that the claim in behalf of Claimant Sager is entirely lacking in Agreement or other support. In fact, the Company has shown that under existing awards of the National Railroad Adjustment Board, the answer is clearly provided that a holiday falling within the vacation period is paid for as a vacation day, but not again as a holiday.

The claim is without merit, and it should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employee or to his representative and made a part of this dispute. (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 waived right of appearance at hearing thereon.

Claimant was on vacation from May 17 to May 21, inclusive. His birthday was on May 19, 1965. He was paid eight (8) hours for each day of his vacation, including May 19, 1965. An employee's birthday is a paid holiday. Employees are requesting an additional eight (8) hours holiday pay for May 19, 1965.

The same issue is fully discussed in Award No. 5251. The principles and conclusions adopted in Award No. 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. 5257

The majority's decision to sustain the claim presented in Award No. 5257 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. 5257 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