

Award No. 5259
Docket No. 5115
2-SP(PL)-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. 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), on November 21, 1964.

2. That accordingly the Southern Pacific Railroad Company compensate carman Jonas Henry additional (8) hours at rate of time and one-half, for having been required to work on his birthday, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman Jonas Henry, hereinafter referred to as the Claimant, is employed at Fresno, California, by the Southern Pacific Railroad Company, hereinafter called the Carrier, Sunday through Saturday with Friday and Saturday as rest days.

The Claimant worked on Monday, July 5, 1965, which is one of the legal holidays covered in Rule 6 of the Agreement. The Claimant was paid eight hours pay at time and one-half rate for working on that day.

In addition to the foregoing, July 5 is the Claimant's birthday. He claimed and was denied additional eight hours pay at time and one-half rate for working on his birthday.

This dispute has been handled in accordance with the Agreement with all Carrier officers authorized to handle dispute with the result that all of them declined to adjust it.

The Agreement effective April 16, 1942 as subsequently amended including the Agreement of November 21, 1964 are controlling.

POSITION OF EMPLOYEES: The employees submit that the Claimant, under the provisions of Rule 6 (a) of the April 16, 1942 Agreement, reading 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 employees 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 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 required to work eight hours on July 4, which fell on Sunday and was celebrated on July 5 — claimant's birthday. He received eight hours pay for the Holiday, as well as a like amount for his birthday and eight hours pay at the time and one-half rate for working on that day.

Petitioner contends that Claimant is entitled to another payment at the time and one-half rate since he performed work on both his birthday and the Holiday. We disagree. The parties plainly anticipated this specific situation in Article II Section 6 (f) of their November 21, 1964 Agreement, which provides that "If an employee's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purposes of this Section."

Claimant did not exercise his option to celebrate his birthday on a date other than July 4 and there is no sound basis here for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and then many other awards cited therein that have passed upon precisely the same issue and rules as are now before us the present claim will be denied.

AWARD

Claim denied.

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.