Award No. 5260
Docket No. 5120
2-SP(PL)-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. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1—That the Southern Pacific Company (Pacific Lines), violated Article II, Section 6, paragraph (g) of the February 4, 1965 Agreement.

2—That accordingly the Southern Pacific Company (PL) compensate Machinist A. P. Metz (hereinafter referred to as claimant), an additional eight (8) hours at the time and one-half rate for having been required to work on his birthday-holiday, July 5, 1965, which was denied.

EMPLOYES' STATEMENT OF FACTS: Claimant is a regularly assigned Machinist at Carrier's West Oakland Diesel Shop, with a bulletin assigned workweek of Friday thru Tuesday, including holidays, with rest days of Wednesday and Thursday.

Claimant worked his regular assigned position on Monday, July 5, 1965, the recognized July 4th holiday, **which was also claimant's birthday.**

The record discloses that Carrier as evidenced by Employes' Exhibit A, accepted the fact that two (2) bonafide holidays — the recognized holiday, July 5, 1965, and claimant's birthday holiday — had occurred on July 5, 1965, consistent with claimant's bulletin assigned workweek, **in that claimant received eight (8) hours compensation at the pro rata rate for each of the two (2) holidays involved — the recognized legal holiday July 5, 1965 and claimant's birthday holiday.** Claimant was also compensated at the time and one-half rate for service rendered on the July 5th recognized holiday — **but was denied the additional payment of eight (8) hours compensation at time and one-half rate for service rendered on his birthday holiday,** which he was contractually entitled to receive under applicable provisions of Article II, Section 6, of the Agreement dated February 4, 1965.

This dispute has been handled up to and with the highest Carrier officer designated to handle such matters, with the result no adjustment can be effected on the property.

The Agreement of February 4, 1965 will be searched in vain for specific wording to so provide. On the contrary, the agreement specifies under Article II, Section 6(g), that the determination of whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday. Said agreement merely provides for an arbitrary allowance of 8 hours at pro rata rate to qualified employes for their birthdays which was not allowed prior to February 4, 1965, and for continuation of the same payment applied under previous rules and practices for work performed on holidays.

There is no rule that states that an additional payment of 8 hours at penalty rate is to be allowed separate and apart from payments for work 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 existihg 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 employes 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 filled 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.

Claimant was required to work eight hours on July 5, 1965, which was not only a holiday but also his 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 February 4, 1965, Agreement, which provides that "If an employe'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 Independence Day and there is no sound basis here for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and the 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.

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