

Award No. 5263

Docket No. 5161

2-MP-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of February 4, 1965, particularly Article II, Section 6 (g), when they refused to compensate Machinist D. W. Shepp for working his Birthday Holiday on February 22, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Shepp in the amount of eight (8) hours at the punitive rate for working his Birthday Holiday, February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Machinist D. W. Shepp, hereinafter referred to as the Claimant, is regularly employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, and regularly assigned in the Diesel Shop at St. Louis, Missouri, with assigned hours of 11:30 P.M. to 7:30 A.M., with workweek Sunday through Thursday, rest days Friday and Saturday. Claimant, in line with the note to Rule 5, was assigned by the Carrier to work the third shift from 11:30 P.M. to 7:30 A.M. on a legal holiday, Washington's Birthday, Monday, February 22, 1965, on which date the Claimant's birthday also occurred. Claimant was compensated for February 22, 1965, as follows:

1. Eight (8) hours at straight time rate as holiday compensation for the legal holiday Washington's Birthday as per Article II of the August 21, 1954 agreement as amended by Article III of August 19, 1960 agreement.

2. Eight (8) hours at the straight time rate as Birthday Holiday compensation as per Article II of the February 4, 1965 agreement.

3. Eight (8) hours at time and one-half for working Washington's Birthday, February 22, 1965 as per Rule 3 (b) of the controlling agreement.

"* * * 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 avail himself of the opportunity to select an alternate date to celebrate his birthday. If he had done so and had been required to work on both the recognized holiday and his birthday holiday, he would have been paid at the time and one-half rate for work performed on both holidays. The Carrier has found it possible to blank jobs in diesel facilities when a birthday occurs and this perhaps influenced claimant to refrain from selecting an alternate day and to file this claim.

Nowhere in the Shop Craft Agreement on this property or in the National Agreement of February 4, 1965 is it contemplated that an employee will be paid more than once for work performed. The rate for work performed may be the pro rata rate, the overtime rate or the double time rate but the rules do not contemplate or provide that an employee will be paid twice regardless of which rate is applicable. In the absence of a specific rule which requires paying an employee twice for work performed, a claim for such double payment as in this case must be denied.

Not only is there no rule providing for double payment for work performed but we point out that the parties on this property have agreed there shall be no overtime on overtime. See Rule 4 (i). The agreement specifically prohibits pyramiding overtime by utilizing overtime payments as a basis for claiming more overtime. Claimant has been properly compensated in accordance with Rule 3 (b) for the work performed on February 22, 1965.

A claim for double payment for work performed has recently been considered by the Third Division under slightly different circumstances in Award 14240 where the Third Division denied a claim for such double payment.

The payment of eight hours at the time and one-half rate properly compensated claimant for the work performed on the date of claim. He is not entitled to the additional compensation claimed. It follows that your Board must deny the Employees' 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 waived right of appearance at hearing thereon.

Claimant was required to work eight hours on Washington's Birthday, 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 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 Washington's Birthday 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.