

Award No. 5265
Docket No. 5169
2-IC-CM-'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. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, J. E. Martin, Carman, is entitled to an additional eight (8) hours at time and one-half rate of pay for work performed on January 1, 1965, which was a holiday, and also his birthday.

2. That accordingly the Illinois Central Railroad be ordered to compensate J. E. Martin, Carman, eight (8) hours at time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman J. E. Martin, hereinafter referred to as the Claimant, is employed at Fort Dodge, Iowa, by the Illinois Central Railroad, hereinafter called the Carrier.

The Claimant worked on Friday, January 1, 1965, which is one of the legal holidays covered in Rule 3B 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, January 1 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 disputes with the result that all of them declined to adjust it.

The Agreement effective April 1, 1935 as subsequently amended including the Agreement of November 21, 1965 are controlling.

POSITION OF EMPLOYES: The employes submit that the Claimant, under the provisions of Rule 3B of the April 1, 1935 Agreement, reading as follows:

to permit the duplication of overtime. Thus, both rules are obeyed by the payment of a single overtime day.

The company, in light of all these reasons, asks that the Board deny the claim. Oral hearing is not desired unless requested by the union.

(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 New Year's, 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 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 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 New Year's and there is no sound basis here for awarding duplicate payment 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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