

Award No. 5325

Docket No. 5135

2-MP-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 1 and 5(a) and the Agreement of November 21, 1964, particularly Article II, Section 6(g), when they only allowed Car Inspector C. F. Doll to work three and one-half hours (3½ hours) of his regular assignment on April 27, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Car Inspector C. F. Doll in the amount of four and one-half hours (4½ hours) at the punitive rate from 7:30 P. M. to 12 Midnight, April 27, 1965, account being denied the right to complete his shift on that date.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a spot rip track, running repair track and transportation yard at Wichita, Kansas. Car Inspector C. F. Doll, hereinafter referred to as the Claimant, is regularly assigned by bulletin as car inspector in the train yards with assigned hours of 4:00 P. M. to 12 Midnight.

On April 27, 1965, the Claimant's regularly assigned day to work which was also his birthday holiday, he reported for work at 4:00 P. M., however, at 7:30 P. M. he was sent home by supervision. The Claimant reported to his regular work in time and worked on his regular work the same as any other evening shift. He was not called under any emergency rule or for any emergency work, also, the Claimant works his regular position on other holidays—not part of the day, but the entire day, therefore, the Claimant, being sent home during his regular assigned hours and not allowed to complete the rest of the day deprived him of 4½ hours' pay, which constitutes the basis of the claim.

For the reasons fully stated above, this claim is not supported by the rules cited by the Employees. The issues in this dispute have been previously considered by your Board and the arguments advanced by the Employees have been rejected as evidenced by the denial awards cited above. It follows that this claim must be denied.

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.

The essential facts are not in dispute. Claimant was a regularly assigned car inspector at Wichita, Kansas, whose work was from Monday through Friday and whose hours of work was from 4:00 P. M. to midnight.

April 27, 1965 was Claimant's regularly assigned work day. It was also his birthday holiday. Claimant was not scheduled to work that day. But at some time during the day he was called and asked to report at 4:00 P. M. to render needed services. He worked three hours and thirty minutes and he was paid for that time at the punitive rate.

Employees contend that the Claimant, having been called to work on his holiday, was entitled to complete the balance of the day as provided in Rule 5(a). For that reason, Claimant is entitled to additional compensation for four and one-half hours at the punitive rate. In other words, Claimant should have been permitted to work until 12:00 midnight.

Rule 5(a) reads as follows:

"Rule 5(a). Employees assigned to rest day relief positions and/or holiday work, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request . . ."

This rule covers employees who are "assigned" to holiday work. The record shows, however, that the Claimant was not so "assigned" to work on April 27, 1965, and for several reasons.

First, there is nothing in the Agreement that prohibits the Carrier from "blanking" positions on holidays. When Claimant completed his tour of duty

at midnight of the previous day, he was not expected to work his tour of duty on April 27, 1965. His position was "blanked" on his holiday. It was not until some time on April 27 that the Carrier discovered the need for work and called the Claimant.

Second, the Note to Rule 5 says that "Notice will be posted five (5) days preceding a holiday listing the names of employees assigned to work on the holiday." No such notice was posted requiring the Claimant to work on his birthday holiday.

Third, under the same Note to Rule 5 the Carrier was obliged to call the Claimant and not another employee, to perform the required work on his holiday.

Fourth, Section 6(a) of Article II of the November 21, 1964 Agreement says that "For regularly assigned employees, if an employee's birthday falls on a work day of the work week of the individual employee he shall be given the day off with pay . . ." The parties contemplated that such an employee be given a day off with pay. All of the probative evidence in the record shows that the Claimant was originally not scheduled to work on his birthday holiday.

Finally, the provisions contained in Rule 5(a) apply to those employees who are "assigned" to work on a holiday. On the basis of all of the evidence in the record and the other rules heretofore cited, this Claimant was not "assigned" to work on April 27, 1965. He was properly compensated as provided in Rule 4(d) of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1967.