



Award No. 5328

Docket No. 5104

2-SLSF-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under current agreement Machinist Harold E. Day has been improperly denied additional compensation in the amount of eight (8) hours at pro rata rate for January 23, 1965.

(2) That the Carrier be ordered to additionally compensate the aforesaid claimant in the amount of eight (8) hours at pro rata rate of pay for January 23, 1965.

EMPLOYEES' STATEMENT OF FACTS: Machinist Harold E. Day, hereinafter referred to as the Claimant, was regularly employed by the St. Louis-San Francisco Railway Company, hereinafter referred to as Carrier, as a Machinist in Carrier's Springfield, Missouri Diesel Shops, with work week Friday through Tuesday, rest days Wednesday and Thursday.

Claimant took his 1965 vacation January 8 through January 26, 1965, both dates inclusive, returning to service Friday, January 29, 1965. Claimant's birthday was Friday, January 23rd, a vacation day of his vacation period, for which he was paid a day's vacation pay. However, Carrier failed to allow him birthday holiday compensation for the day, Friday, January 23rd.

Claim was filed with proper officer of the Carrier under date of April 15, 1965, contending that Claimant was entitled to eight (8) hours' Birthday Holiday compensation for his birthday, January 23rd, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of Carrier designed to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective January 1, 1945, amended June 1, 1952, as subsequently amended, is controlling.

if it had been the intent of the parties to depart from that principle respecting the birthday-holiday such an intent would have been specifically expressed "as hereinafter provided" in Article II, Section 6 of the Agreement of February 4, 1965.

The Carrier's position is also buttressed by the reports and recommendations of Emergency Boards 106, 130 and 162. Both Emergency Boards 106 and 130 concluded that it would be inconsistent with the maintenance of the take-home pay theory of paid vacations to provide additional pay or vacation for holidays falling during vacations, and Emergency Board 162 concluded, as it did in connection with the proposals to change the eligibility rules for paid holidays, that there have been no significant developments with respect to holidays during vacations which justify any further recommendations by the Board. (Pages 39 and 40 of the Report and Recommendations of Emergency Board 162.)

The reparations portion of the claim requests that the claimant be allowed an additional day's pay at pro rata rate. This portion of the claim serves only to lend additional support to the Carrier's position.

Should this Division decide that this dispute can be resolved by isolating and construing Article II, Section 6 of the Agreement of February 4, 1965 separately and independently of any other provision in the agreements, the claimant is a regularly assigned employee and Paragraph (a) of the said Section provides that for such 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. That, however, is not the claim before this Division. The claim here is for an additional day's pay. Paragraph (a) of the rule standing alone does not support the claim as appealed. The claimant did not work his birthday-holiday. He was away on vacation and nothing in the Agreements provides in the circumstances here involved that such an employee's vacation period shall be extended to the extent of the employee's birthday-holiday.

Upon the basis of the record and all of the evidence, the Carrier respectfully requests this Division to find that the Carrier did not violate the Agreement.

(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, a machinist with a Friday through Tuesday work week, took January 8 through 26 as his 1965 vacation and received his regular pay for each of those vacation days. The theory of the present claim is that Claimant

is entitled under Article II, Section 6 of the February 4, 1965 Agreement, to an additional day's pay for Friday, January 23, 1965, since that day was not only a vacation day but also his birthday-holiday. A like claim was denied in Award 5230 which involved the same question and contract provisions as are now before us.

In Award 5230, this Board quoted the relevant portions of Article II, Section 6 and then, in two paragraphs immediately following that quotation, proceeded to analyze Section 6(a). It still is our opinion that that analysis is correct, although we recognize that there may be a difference of opinion regarding its validity, as the vigorous Dissent to Award 5230 makes clear. Certainly Award 5251 offers no persuasive reason for changing our opinion in that regard, since it did not even touch upon, let alone explain away, Award 5230's analysis of Section 6(a), although the analysis was a key point in the Board's reasoning in Award 5230 and the "additional day's pay" mentioned in the first sentence of Section 6 is clearly limited by subparagraph (a). The phrase, "palpably erroneous," as used in Award 5251, is merely empty and meaningless verbiage under such circumstances.

We have reviewed Award 5230 in the light of the Dissent and Award 5251 and still find Article II, Section 6 not sufficiently definite and unambiguous as to require an additional day's pay for an employee when his birthday falls during his vacation on what ordinarily would be a work day.

The 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 4th day of December, 1967.