



**Award No. 5329**

**Docket No. 5068**

**2-MP-EW-'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.

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**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Missouri Pacific Railroad Company violated the Agreement of February 4, 1965, and Letter of Understanding of February 4, 1965, when they declined to pay birthday holiday pay to Electrician L. Levy, on January 12, 1965, Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Levy in the amount of eight (8) hours at the pro rata rate for January 12, 1965, his birthday holiday.

**EMPLOYEES' STATEMENT OF FACTS:** Electrician L. Levy, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, at Little Rock, Arkansas. The Claimant started his annual ten (10) day vacation on January 4, 1965, and while on vacation his birthday occurred on Tuesday, January 12, 1965, however, the Carrier has failed to compensate the Claimant for his birthday holiday, although he qualified under the Agreement of February 4, 1965, specifically Letter of Understanding dated February 4, 1965, which is found on last two pages of the agreement, for birthday holiday pay, which constitutes the basis of the claim.

This matter has been handled up to and including the highest designated Officer of the Carrier who has declined to adjust it.

The Agreement of February 4, 1965 and the Agreement of June 1, 1960, as amended, are controlling.

**POSITION OF EMPLOYEES:** That Article II, Sections 6(a), (b), and (c) of the Agreement of February 4, 1965, reading:

**"ARTICLE II. HOLIDAYS**

\* \* \* \* \*

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily and weekly

Holiday Rule so that the Vacation Agreement would be applied in a manner that the employe would not receive two days' pay when a holiday fell during the vacation period. This is the reason for Section 3 of the Vacation Agreement quoted in the Carrier's Statement of Facts above.

When the parties agreed to the addition of the birthday holiday, no change was made in Section 3 of the Vacation Agreement referred to above. The birthday holiday when falling during a vacation period must also be considered as a work day of the period for which the employe is entitled to vacation. This means he is entitled to eight hours pro rata for each day while on vacation and nothing more.

The issues raised by this dispute have been given thorough consideration not only by this office but by the Carrier's Committee that negotiated the Agreement of February 4, 1965. In fact, the particular question raised by this dispute was put to the Committee and the question and the Committee's answer thereto is as follows:

- "Q. If the birthday of an hourly, daily or weekly rated employe falls during his vacation period, would he receive another day off or additional pay in lieu thereof.
- A. If the birthday falls on a work day during the vacation period, it is to be considered as a work day of the period for which the employe is entitled to vacation under application of Section 3 of Article I — Vacation — of the Non-ops Agreement of August 21, 1954. He would not receive another day off or vacation pay in lieu thereof."

Claimant was paid eight hours pro rata for each day while on vacation and is not entitled to any additional compensation.

We also point out that the letter agreement of February 4, 1965 which is applicable to employes whose birthday fell between January 1, 1965 and February 15, 1965, likewise did not amend the Vacation Agreement. Claimant was paid eight hours for January 12, 1965 and the amendments to the Vacation Agreement on August 21, 1954, limits the employe's pay while on vacation to that amount.

The Employes ignored the Vacation Agreement in the handling of this claim on the property. The reason is the Vacation Agreement requires a denial of the claim. It follows that your Board must deny the claim.

**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, an electrician at Little Rock, Arkansas, took his 1965 vacation from January 4 to 13 and was paid for each vacation day. Petitioner contends that he should have received an additional day's pay under Article II, Section 6 of the February 4, 1965 Agreement inasmuch as Tuesday, January 12, 1965, was not only a vacation day but also his birthday-holiday.

What we had to say in denial Awards 5230 and Award 5328 regarding the same issue is equally applicable here. It is true that in this case, unlike those just cited, the claim is also supported by a Letter of Understanding, dated February 4, 1965 which stipulates that "An employee whose birthday occurred between January 1, 1965 and February 15, 1965, inclusive, whether or not such employee performed compensated service on that day, and if he meets the qualifications, shall be allowed one additional day's pay at the applicable pro rata rate, and there will be no other claim against, or liability upon, the carrier in connection with such employee's birthday." However, we are not satisfied that the intent and meaning of the Understanding are to give employees whose birthdays occurred between January 1, 1965, and February 15, 1965, greater vacation benefits than employees whose birthdays occurred subsequent to the latter date.

#### 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.