



Award No. 5330
Docket No. 5101
2-SP(PL)-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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist F. R. Salvato and Machinist Helper W. C. Quintaro (hereinafter referred to as claimants), were improperly compensated under applicable terms of current controlling agreements while on vacation.

2. That accordingly, the Carrier be ordered to additionally compensate claimants in the amount of eight (8) hours pay at the pro rata rate, Claimant F. R. Salvato for the date of June 3, 1965 and Claimant W. C. Quintaro for the date of June 25, 1965.

EMPLOYEES' STATEMENT OF FACTS: Claimants are regularly assigned at Carrier's Los Angeles General Shops, with a bulletin assigned workweek of Monday thru Friday, with rest days of Saturday and Sunday.

Claimants were on their scheduled vacations on the dates of June 3, 1965 and June 25, 1965, respectively, which dates were workdays of their bulletin assigned workweek, also Claimants birthdays.

While Claimants were on their scheduled vacations their positions were filled every day of their assignments' workweek, and the employees filling the assignments were paid eight (8) hours at straight time rate while so used.

The record discloses that while on vacation Claimants were compensated eight (8) hours pay at pro rata rate for the dates of June 3, 1965 and June 25, 1965, respectively, as a day of their scheduled vacation, but were denied an "additional day's pay" for their Birthday Holiday falling on said dates, as contemplated under applicable provisions of Article II, Section 6, of the Agreement of February 4, 1965.

vacation day of the period for which the employee is entitled to vacation, such vacation period shall be extended accordingly, and the employee shall be entitled to his holiday pay for such day."

(Article III, referred to above, includes "Employee's Birthday.")

The proposal quoted above seeks to secure the same additional pay for Claimant that Petitioner seeks in the instant claim, proving beyond any doubt that existing Agreement rules do not provide for said payment and that Petitioner is fully aware of the fact. Any other determination places Petitioner in the pointless position of seeking something already possessed.

The subject new proposal clearly shows Petitioner is now properly seeking an agreement change in the manner contemplated by the Railway Labor Act, while at the same time is asking this Division to furnish sustaining award prior to the adoption by negotiation of the new rule which the Division, of course, is not empowered to do.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

(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.

Claimants' birthday-holidays occurred on dates during their 1965 vacations that were ordinarily assigned workdays. The issue is whether or not each Claimant is entitled to an additional day's pay under Article II Section 6 of the February 4, 1965, Agreement.

Awards 5230 and 5328 denied substantially similar claims and no material distinction is perceived between those cases and the present situation. We accordingly will deny the claim for the reasons mentioned in the Award cited above.

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.

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