Award No. 5378
Docket No. 5195
2-GTW-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James E. Knox when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 92, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Grand Trunk Western Railroad Company violated Article II, Section 6 of the November 21, 1964 Agreement.

2. That accordingly the Grand Trunk Western Railroad Company compensate Carman K. Miles eight (8) hours at the pro rata rate of pay for his birthday (June 16, 1965), while on vacation.

EMPLOYES' STATEMENT OF FACTS: Carman K. Miles, hereinafter referred to as the Claimant, was regularly employed by the Grand Trunk Western Railroad Co., hereinafter referred to as Carrier, as a Carman in Carrier's Repair Track at Pontiac, Michigan with work week Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1965 vacation June 14 through June 18, 1965, both dates inclusive, returning to service Monday, June 21, 1965. Claimant's birthday was Wednesday, June 16th, 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, Wednesday, June 16th.

Car Foreman Page, Carrier's representative at Pontiac, Michigan, agreed with the local committee of the Brotherhood of Railway Carmen of America, that claimant should be granted the additional 8 hours' pay and turned it into the payroll department as such. However, the payroll department disallowed the claim.

Claim was filed with proper officer of the Carrier under date of July 30, 1965, contending that claimant was entitled to eight (8) hours' Birthday Holiday compensation for his birthday, June 16th, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of Carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

In the dispute settled under Second Division Award 2291 (Adolph E. Wenke) the Organization filing claim alleged that certain employes were improperly denied one day's pay for Monday, July 5, 1954, a day celebrated as a holiday which fell within their vacation period of fifteen consecutive work days. The Organization requested that the Carrier be ordered to compensate the employes at their applicable rate in the amount of one (1) day's pay. In arguing its case before the Board, the Carrier pointed out that the purpose of the paid holiday rule is not to increase the number of days to which an employe is entitled under the vacation agreement, that Section 3 of Article I of the August 21, 1954 Agreement clearly provides that holidays which fall on what would be a work day of an employe's work week shall be considered a work day of the period for which he is entitled to a vacation and that the paid holiday rule does not increase the number of days to which the employe is entitled. In denying the claim, the Board stated the instant case presented the same question upon which Award 2277 is based and that what was said therein was controlling.

CONCLUSION

In this ex parte submission the Company has shown that the agreed upon interpretations of the Vacation Agreement, Article II, Section 6 subparagraphs (a) and (g) of the November 21, 1964 Agreement and Section 3 of Article I–Vacations of the Agreement of August 21, 1954, supports management's position that a holiday falling within an employe's vacation period shall be considered a work day for vacation purposes and that no payment beyond 8 hours is due for the holiday-vacation day. Finally, the Company has shown that awards of the National Railroad Adjustment Board supports management's position in this dispute.

The claim that Car Inspector Miles is entitled to 8 hours' additional pay for June 16, 1965, is without merit and should be denied.

The instant claim has been handled in the usual manner on the property, up to and including the Vice President and General Manager, the highest officer of the Carrier designated to handle claims and grievances.

All data contained herein have in substance been presented to the employes and made a part of the particular question in dispute.

Oral hearing is not desired unless so requested by the employes in which latter event Carrier desires to have a representative present.

(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.

The claimant is a regularly assigned employe with a work week from Monday through Friday. In 1965 his birthday fell on Wednesday, during a work week he was on vacation. The claimant was not regularly assigned to work holidays and his position was blanked on his birthday.

This case which arises under the National Agreement of November 21, 1964, is controlled by the findings in Award 2–5372.

AWARD

Claim sustained for 8 hours at the straight time rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February, 1968.

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