



Award No. 5382
Docket No. 5202
2-T&P-EW-'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. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That The Texas and Pacific Railway Company violated the Agreement of February 4, 1965, when it refused to pay birthday-holiday pay to Electrician G. Zuber in the amount of eight (8) hours at pro rata rate for August 23, 1965.
2. That accordingly, the Texas and Pacific Railway Company be ordered to additionally compensate G. Zuber in the amount of eight (8) hours at pro rata rate for August 23, 1965.

EMPLOYEES' STATEMENT OF FACTS: Electrician G. Zuber, hereinafter referred to as the Claimant, was regularly employed by the Texas and Pacific Railway Company, hereinafter referred to as the Carrier, as its Lancaster Shops at Ft. Worth, Texas. While claimant was on his scheduled vacation which was from August 21, 1965 to September 4, 1965, his birthday occurred August 23, 1965, which was within his vacation period. Claimant was paid a day's pay for it being a vacation day, but the carrier failed to allow him birthday-holiday pay for the day, August 23, 1965.

A claim was filed with the proper officer of the Carrier under date of October 21, 1965, contending that claimant was entitled to eight (8) hours birthday-holiday compensation for his birthday, August 23, 1965, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of the Carrier designated to handle such matters, all of whom declined to make a satisfactory adjustment.

The agreement of September 1, 1949, as subsequently amended particularly, by the February 4, 1965 agreement is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow the Claimant eight (8) hours birthday-holiday compensation for his birthday, August 23, 1965, in addition to vacation pay allowed for the day.

rate. The employee is entitled to nothing more unless the agreement specifically so provides. An example where the agreement specifically provides for more than eight hours' pay for a day is the holiday overtime rule. If an employee qualifies for holiday pay and is required to work on the holiday, he is allowed holiday pay and pay for time worked at the time and one-half rate. Another example is the agreement adding the birthday holiday which specifically provides that an employee whose birthday falls on a rest day will be paid holiday pay and this pay will be in addition to any other to which he is otherwise entitled for that day. The agreement specifically sets forth the conditions under which an employee will receive more than eight hours' pay. The agreement does not state that an employee whose birthday falls while the employee is absent on vacation will receive more than eight hours' pay. The vacation agreement provides that an employee is to be granted five, ten, fifteen or twenty consecutive work days with pay as annual vacation. It does not entitle an employee to two days' pay for one day of vacation.

The Employees 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.

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 of the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant is a regularly assigned employee with a workweek from Saturday through Wednesday. In 1965 his birthday fell on Monday 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 February 4, 1965, 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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