

Award No. 5383

Docket No. 5203

2-UP-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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That the current Birthday Holiday Agreement of February 4, 1965, was violated when the Union Pacific Railroad Company refused to compensate Electrician J. R. Dickerson an additional eight (8) hours' pay at the current rate for June 6, 1965 Birthday Holiday while on vacation.

EMPLOYEES' STATEMENT OF FACTS: Electrician J. R. Dickerson, hereinafter referred to as the Claimant, was regularly employed by the Union Pacific Railroad Company, hereinafter referred to as Carrier, as an Electrician in Carrier's Shops at Pocatello, Idaho, with work week Wednesday through Sunday, rest days Monday and Tuesday.

Claimant took his 1965 vacation May 19 through June 6, 1965, both dates inclusive, returning to service Wednesday, June 9, 1965. Claimant's birthday was Sunday, June 6th, 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, Sunday, June 6th.

Claim was filed with proper officer of the Carrier under date of June 21, 1965, contending that claimant was entitled to eight (8) hours Birthday Holiday compensation for his birthday, June 6th, 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.

The agreement effective September 1, 1949 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when it failed and refused to allow claimant eight (8) hours birthday holiday compensation for his birthday June 6, 1965, in addition to vacation pay allowed for the day.

It is respectfully submitted that the Organization's claim is without foundation under the applicable agreement and should be denied.

The Carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the Organization in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the Organization in such submission, which cannot be forecast by the Carrier at this time and have not been answered, in this, the Carrier's initial submission.

All data used in this Response to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

The Carrier hereby waives oral hearing provided the Organization also waives such hearing upon the understanding that the Carrier is given the opportunity to file a reply to the Organization's ex parte submission and that Carrier does not waive the right to appear before the referee if a referee hearing is ultimately held.

(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 workweek from Wednesday through Sunday. In 1965 his birthday fell on Sunday 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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