

Award No. 5385
Docket No. 5206
2-CUT-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. 150, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carrier improperly compensated Electrical Worker P. McAllister, while on his assigned vacation period and his birthday-holiday falling on an assigned vacation day. April 6, 1965.

2. That the Carrier be ordered to additionally compensate the aforesaid employe for April 6, 1965 for:

(a) Four (4) hours at the pro rata rate, which represents the difference between compensation received and that which carrier would have paid had employe not been on vacation.

(b) Eight (8) hours at straight time rate as birthday holiday pay while on vacation.

EMPLOYEES' STATEMENT OF FACTS: Mr. P. McAllister, Electrician, hereinafter referred to as the claimant, was regularly employed by the Cincinnati Union Terminal Company, hereinafter referred to as the Carrier, as an electrician, on Job No. 6, at Cincinnati, Ohio, with a work week of Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1965 vacation, April 5 through April 16, 1965, both dates inclusive, returning to service of the Carrier on Monday, April 19, 1965.

Claimant's birthday was Tuesday, April 6, 1965, a vacation day of his vacation period, for which he was paid a day's vacation pay, however, Carrier failed to allow claimant birthday holiday compensation for the day, Tuesday, April 6, 1965.

Carrier assigned vacation relief electrician C. Loomis to fill the vacation vacancy of claimant on Job 6, carrier, however, failed to properly compensate claimant at the time and one-half rate, or compensation claimant would have received had he not been on vacation.

The present claim by the Organization is merely an attempt to overturn the previous rulings of this Board in Award Nos. 3477, 3565 and many others. The Carrier has followed these interpretations of the Board in applying the rules to the present Claimant and it seems only fair that this Board should deny this claim on the sound basis that it is not supported by the controlling rules and is contrary to the precedent awards of this Board.

CONCLUSION

Based on what has been said heretofore, Carrier submits that the claim before this Board should be dismissed or denied for the following reasons:

1. Claim is barred due to failure to comply with applicable time limits for presentation of claims in Section 1 (a) of Article V of the Memorandum of Agreement dated August 21, 1954.
2. The other signatories to the identical Birthday Holiday Agreement, both Carrier and Organization, do not agree with the Railway Employees Department interpretation of Article II Section 6 (a) of that Agreement.
3. The Railway Employees Department interpretation of the Birthday Holiday Agreement conflicts with the recommendation of Presidential Emergency Board No. 162.
4. The fact that the Railway Employees Department is attempting to change the Holiday Agreement by means of Section 6 Notice so that they will no longer lose a holiday falling within a vacation period is an admission they have no such rule at present.
5. The Claimant was properly paid for April 6, 1965 under the vacation and holiday rules of the Agreement as interpreted by numerous Awards of the National Railroad Adjustment Board and particularly Second Division Award Nos. 3477 and 3565 which are directly in point.

For the foregoing reasons this claim is without merit and Carrier respectfully requests that it be dismissed or denied in its entirety.

All data submitted in support of Carrier's position has been made known to the Employees and made a part of the particular question in dispute.

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 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.

At each step in the proceeding the carrier has contended that the employes' claim was not presented within the time limits established by the

parties. Section 1(a) of Article V of the August 21, 1954, Agreement between the parties requires that "(a)ll claims or grievances must be presented in writing * * * to the officer of the Carrier authorized to receive same, within 60 days from the time of the occurrence on which the claim or grievance is based."

The claim was presented to the Master Mechanic, the officer of the carrier who was authorized to receive the claim, on July 2, 1965. The carrier contends that the claim occurred on April 6, 1965, the day for which the additional compensation is claimed. The employes argue that the occurrence on which their claim is based is the carrier's denial on May 11, 1965, of the claimant's request for an adjustment of his April 6 compensation. Neither party is correct.

The occurrence on which the claim is based is the failure of the carrier to pay claimant the amount to which the employes believe he is entitled for April 6. As recognized in Award 3-15141 (House), this failure occurred on April 30, 1965, when the claimant was given his pay check for the period which included April 6.

The claimant's request that his pay check be corrected did not charge the occurrence on which the claim is based. It was merely an attempt outside of the procedures established by the agreement to obtain the claimed compensation. In entertaining this request, the carrier did not prejudice a timely presentation of the claim. Forty-nine days before the deadline, the carrier made it clear that it would be necessary to present a formal claim to obtain any relief.

The employes themselves recognize that the request by the claimant for an adjustment cannot be treated as the presentation of the claim. It was apparently understood by all that such requests would not be considered formal claims. The request was not directed to the official designated by the carrier as the officer to receive claims. Even if the request could be treated as the presentation of the claim, the employes would still have a time problem, for then the denial of that request on May 11, 1965, would have marked the beginning of the 60-day appeal period established by Section 1(b) of Article V. Acting on the assumption that their claim was not denied by the carrier until after they had presented their formal claim on July 2, 1965, the employes did not appeal to the next officer of the carrier designated to review the claim until August 4, 1965.

Under the circumstances of this case, the failure of the employes to present their claim within 60 days from April 30, 1965, was not in accordance with procedures established by the parties. Under the Railway Labor Act, Section 3(i) and the Rules and Procedures of this Board, Circular No. 1, this Board has no jurisdiction over a claim which has not been handled on the property in the usual manner. E.g., Award 2-5308 (Weston); Award 2-3865 (Johnson).

AWARD

Claim dismissed.

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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