

Award No. 5452
Docket No. 5308
2-SP(T&L)-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carman)**

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company (Texas and Louisiana Lines) violated Article II - Section 6(a) of the November 21, 1964 Agreement when the Southern Pacific Company (Texas and Louisiana Lines) did not compensate Carman B. C. McCord for working on his birthday-holiday October 12, 1965.

2. That accordingly the Southern Pacific Company (Texas and Louisiana Lines) be ordered to compensate Carman B. C. McCord nine (9) hours and twenty-three (23) minutes in addition to that he was compensated October 12, 1965.

EMPLOYEES' STATEMENT OF FACTS: B. C. McCord, hereinafter referred to as the claimant, is employed as a carman by the Southern Pacific Company (Texas and Louisiana Lines), hereinafter referred to as the carrier, on the Hearne, Texas Car Repair Tracks, with assigned hours 8:00 A.M. to 12:00 Noon and from 12:30 P.M. to 3:30 P.M., with assigned work days Wednesdays through Sundays, with regular assigned rest days Mondays and Tuesdays. On Tuesday, October 12, 1965, one of the claimant's assigned rest days, and also the claimant's birthday, the claimant was called to duty at 9:15 A.M. to accompany Carman L. P. Davenal to perform re-railing work of car MP 32596, which was derailed at Mile Post 71, between Austin, Texas and Houston, Texas, and the claimant and Carman L. P. Davenal rerailed the car and returned and arrived Hearne, Texas (home point), at 3:30 P.M., October 12, 1965.

The claimant charged, on his time card, twelve (12) hours and thirty (30) minutes on time and one-half basis for working six (6) hours and fifteen (15) minutes on his assigned rest day and his birthday-holiday and charged eight (8) hours for his birthday-holiday at pro rata rate and one (1)

The Division is respectfully referred to the 40-hour week Agreement dated March 19, 1949, to which the Petitioning Organization was signatory. Article II, Section 3(a), on pages 10 and 11 of that agreement, stipulates that provisions in existing rules which relate to the payment of daily overtime shall remain unchanged, and that work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate. In the third paragraph on page 11 the agreement specified that "There shall be no overtime on overtime." The Petitioner does not dispute that the six hours fifteen minutes paid the claimant for service on his rest day was at the punitive rate under Rule 3. Petitioner now seeks to have the claimant paid two days for one day's work, which the Carrier submits constitutes overtime on overtime in violation of the clear and unambiguous prohibition of this manner of payment in the 40-Hour Week Agreement.

CONCLUSION

Claimant was properly compensated for October 12, 1965, in accordance with effective agreements. The claim in this case, predicated on an erroneous interpretation of the November 21, 1964 Agreement, is without merit and should in all things be denied.

It is affirmatively stated that all evidence used herein has been made available to the duly authorized Organization representative.

The Carrier waives oral hearing, unless it is requested by the Organization, in which event the Carrier also desires to be heard.

(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 was employed as a Carman. His hours of assignment were 7:00 A. M. to 12 Noon and 12:30 P. M. to 3:30 P. M., Wednesday through Sunday, with Monday and Tuesday rest days. Tuesday, October 12, 1965 was one of the claimant's rest days, and also his birthday. He was called to work and performed service from 9:15 A. M. to 3:30 P. M., a total of six hours, fifteen minutes.

The claimant was paid the time and one-half rate for service performed on his rest day, six hours and fifteen minutes, plus one hour preparatory time. For the birthday holiday, he was paid eight hours at the pro rata rate, plus one hour preparatory time.

The Carrier contended Rule 4 provided for the pay schedule for work performed on rest days, and reads:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed * * *"

The birthday holiday pay was determined by Article II, Section 6(a), which is as follows:

"(a) For regularly assigned employees, if an employee's birthday falls on a work day of the workweek of the individual employee, he shall be given the day off with pay. If an employee's birthday falls on other than a work day of the workweek of the individual employee, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any." (Emphasis ours.)

Thus, the carrier offered in support of its contention that under Rule 4 the claimant received time and one-half for time worked on his rest day. In addition, Article II, Section 6(a) provided for straight time as birthday holiday pay if called to work on that day plus his pay for performing service.

The claimant contended that he should receive additional compensation for six (6) hours at the time and one-half rate for performing service on his birthday holiday. This is a claim for an additional nine (9) hours. The claimant also offers Article II - Section 6(a) in support of the claim, and in addition, Section (g) and Rule 3 of the September 1, 1949 agreement.

Section (g) is as follows:

"Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

Rule 3 of the September 1, 1949 current agreement, second paragraph, reads as follows:

"HOLIDAY WORK.

Work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half."

It was the understanding of the claimant that Birthday holidays were similar to legal holidays, under the current agreement, and should be paid accordingly. Rule 3 provides that if the claimant had worked on a legal holiday he would be paid at the rate of time and one half for the holiday service.

The issue in this dispute has been reviewed in Award 5442, and it is the opinion of the Board that Article II, Section 6(a), specifically provides for Birthday holidays as in the claim at issue:

“ * * * If an employe's birthday falls on other than a work day of the workweek of the individual employe, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any.”

The claimant was on a rest day and received compensation for his work at the time and one-half rate. In addition straight time for his Birthday holiday. The rule requires nothing else.

Rule 4 of the September 1, 1949 Agreement applies to legal holidays, and this day, October 12, not being a designated legal holiday, can not have the pay scale determined by that rule if another rule specifically provides for the same. The rules were adopted after negotiations and birthday holidays were given different recognition than legal holidays, not by implication, but by expressed rules. This Board cannot speculate as to why Birthday holidays were provided for separately and not a part of the regular legal holiday program.

Article I, Section (g), offered by the claimant in support of his contentions, fails to give recognition to Article II, Section 6(a), wherein when an employe's birthday holiday falls on a work day or on a rest day, compensation is provided for. That is the existing rule, and the practice thereunder must fit the rule.

Thus the claimant was paid according to the requirements of Article II, Section 6(a); he worked on his rest day and received time and one half according to Rule 4. There is no dispute over this payment. He was paid straight time for his birthday holiday according to Section 6(a):

“ * * * If an employe's birthday falls on other than a work day of the workweek of the individual employe, he shall receive 8 hours' pay at the pro rata rate of the position to which assigned, * * * ”

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1968.