

Award No. 5454

Docket No. 5143

2-MP-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the Missouri Pacific Railroad Company violated the current agreement, when they denied birthday holiday pay to P. E. Taylor, Machinist, Tuesday, April 13, 1965.

(2) That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Taylor in the amount of eight (8) hours for April 13, 1965, his birthday holiday.

EMPLOYEES' STATEMENT OF FACTS: Machinist P. E. Taylor, hereinafter referred to as the Claimant, was regularly employed by the Missouri Pacific Railroad Co., hereinafter referred to as Carrier, as a Machinist in Carrier's Kansas City Diesel Shop, with work week Saturday through Wednesday, rest days Thursday and Friday.

Claimant took his 1965 vacation commencing Saturday, April 3, 1965, and his birthday occurred on Tuesday, April 13th, 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, Tuesday, April 13, 1965.

Claim was filed with proper officer of the Carrier under date of May 25, 1965, contending that Claimant was entitled to eight (8) hours' Birthday Holiday compensation for his birthday, April 13th, 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 June 1, 1960, as subsequently amended, particularly the February 4, 1965 Agreement, is controlling.

All matters contained herein have been the subject matter of correspondence and/or conference.

(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.

This is the first of several related cases involving the question of what compensation is payable to an employe covered by the National Mediation Agreement of February 4, 1965, whose birthday-holiday occurs on a work day during the period he is on vacation.

The material facts are not in dispute. Claimant was regularly employed as a Machinist by the Carrier, with an assigned work week of Saturday through Wednesday, Thursdays and Fridays off. His 1965 vacation commenced on Saturday, April 3, 1965, and his birthday fell on Tuesday, April 13, which would have been a regularly assigned work day if Claimant had not been absent on vacation and if it had not been his birthday. He was paid vacation pay for April 13 but his claim for an additional eight hours at the pro rata rate for the birthday-holiday was not allowed; hence this dispute.

Article II--Holidays of the February 4, 1965 Agreement, is applicable and controlling under the foregoing facts. In pertinent part it reads as follows:

"Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employes covered by this Agreement is hereby further amended by the addition of the following Section 6:

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily and weekly rated employe shall receive one additional day off with pay, or an additional day's pay, on each such employe's birthday, as hereinafter provided.

(a) For regularly assigned employes, if an employe's birthday falls on a work day of the work week of the individual employe he shall be given the day off with pay; if an employe's birthday falls on other than a work day of the work week 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.

* * * * *

(c) A regularly assigned employe shall qualify for the additional day off or pay in lieu thereof if compensation paid him by the carrier is credited to the work days immediately preceding and following his birthday, or if employe is not assigned to work but is available for service on such days. If the employe's birthday falls on the

last day of a regularly assigned employee's work week, the first work day following his rest days shall be considered the work day immediately following. If the employee's birthday falls on the first work day of his work week, the last work day of the preceding work week shall be considered the work day immediately preceding his birthday."

There appears to be no dispute that Claimant met the qualifying requirements applicable to a regularly assigned employee under Section 6. And it is also clear that his birthday fell on a work day of his work week. As a consequence, Claimant's entitlement under Section 6(a) is to a "... day off with pay;". As this Board said in Award 5230 (Referee Weston):

"Article II Section 6(a) expressly provides for two separate and distinct situations. The first concerns a birthday that occurs on a work day of the employee's work week; Claimant's case clearly comes within that category for his birthday fell on Thursday, a work day of his assigned work week. As to the first situation, Section 6(a) stipulates that the employee will be given the day off with pay, one of the two alternatives mentioned in the first sentence of Section 6.

The second situation is where an employee's birthday occurs on other than a work day of his work week; there he is entitled to '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.' From an examination of the language, punctuation and construction of Section 6(a), it is entirely clear that the clause just quoted does not apply to the first situation."

We also agree with that part of the findings of Award 5230, reading:

"Nowhere in Article II, Section 6 is there a requirement that an extra day's pay be given for a birthday or other holiday that falls within the vacation week on a day that is a work day of the employee's regular work week. The absence of such a provision from the 1964 Agreement is particularly significant, for by the time it had been negotiated, prior awards, interpretations and Emergency Board reports had made it abundantly clear that in the railroad industry employees will not receive additional pay when a holiday occurs during their vacation on what ordinarily would be a work day. See Second Division Awards 2277, 2302, 3477, 3518 and 3557 as well as Awards 9640 and 9641 of the Third Division."

In view of the foregoing, the claim for an additional eight hours' pay will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1968.

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