

Award No. 5539

Docket No. 5392

2-GN-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier violated the Controlling Agreement when it denied Carman Edward Winchell the right to work on his birthday holiday, September 12, 1965.
2. That accordingly, the Carrier be ordered to additionally compensate the claimant in the amount of 8 hours, at the rate of time and one-half, account said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Edward Winchell, hereinafter referred to as the Claimant, is employed in his respective craft and class by the Great Northern Railway Company, hereinafter referred as the Carrier, in its Mechanical Department facilities located at Havre, Montana. Claimant holds a regularly assigned position designated as "Car Shops and Trainyards".

Claimant's birthday was September 12, 1965. Claimant reported for work that date at 3:00 P. M. He was told to go home at 3:05 P. M. At 4:00 P. M., that same date, another carman, Gordon Jensen, was called from the overtime call list to report to work.

A grievance was filed on September 16, 1965, by the local chairman, on behalf of the claimant requesting 8 hours pay, at the rate of time and one-half, account claimant denied the right to work on his birthday as provided in the agreement.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including the highest designated officers of the Carrier, all of whom have declined to make satisfactory adjustment.

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

POSITION OF EMPLOYEES: It is respectfully submitted that the only issue in dispute between the parties is whether or not the claimant was entitled to work on his birthday, September 12, 1965.

2. Section 6(g) of the above referred to agreement does not, in itself, contain any language which requires any particular employees to be worked on their birthday holiday, and is intended to insure the Carrier's right to work employees on their birthday if necessary.

3. The Carrier has heretofore clearly shown that several allegations by the Organization to the effect that claimant was not told not to report for work on his birthday, and a carman was called to fill claimant's position are completely erroneous.

4. This Board has repeatedly recognized, in rejecting claims of the various Organizations within System Federation No. 101, that neither the March 1, 1955 Memorandum of Agreement nor any other Agreement or Rule constitutes "existing rules or practices" which require a minimum number of employees or any particular employees to be worked on holidays. (See Awards 2097, 2471, 3023-3039, 3043-3060, 3093, 3216-3219, 3408, 3432, 3726-3729, 3889 and 3990.)

For the foregoing reasons, the Carrier respectfully requests that the claims of the employees be denied.

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 over the dispute involved herein.

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

Claimant was a regularly assigned employee whose birthday fell on a work day of his work week. He was instructed not to work at 3:00 P. M. on September 12, 1965, and another carman was called from the overtime call list to report to work on said date. Petitioner contends that claimant had a preferential right to work on his birthday pursuant to Article II — Holidays, Section 6, paragraph (g) of the November 21, 1964 Mediation Agreement and the Memorandum of Agreement No. 29 dated September 28, 1954, and revised on March 1, 1955, the pertinent part of which is as follows:

"A. When the same number of employees are worked on holidays as are assigned to work that same day of each week, the regularly assigned men will work the holidays (observed by State, Nation or proclamation) falling on that day of the week. In all cases of reduced holiday forces, employees will be called on the basis of being first out on the established call list of the shift involved."

Carrier contends that claimant's position was not filled, although an additional carman was called from the overtime call list to augment the reduced force on the date of claim as a direct result of operational requirements under Rule 17(e) of the effective Agreement between the parties. Furthermore, Carrier contends that Memorandum No. 29 permits reduction in force on holidays and does not require that a minimum number of employees or any particular employees be worked on holidays.

Article II — Holidays, Section 6, paragraph (g) of the Mediation Agreement of November 21, 1964 provides as follows:

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

Despite Carrier's contention that the March 1, 1955 Memorandum of Agreement has limited application, the applicable language found in paragraph A thereof is clear and unequivocal as to the rights of regularly assigned employes to work on holidays when the same number of employes are required as are assigned to work that same day of each week.

In the instant dispute, Petitioner has established claimant was ordered not to work on his birthday which was his regularly assigned work day, that another carman was called in after claimant was denied an opportunity to work on his birthday — holiday and that there was no reduction of force on said date. Accordingly, the claim will be sustained. (Award 5236; Third Division Awards 15598 and 15638).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1968.