Award No. 5552
Docket No. 5424
2-SOU-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Southern Railway Company violated the Agreement of April 3, 1965, when they denied Birthday-Holiday pay to R. M. Knight, Machinist, Thursday, November 4, 1965 at Atlanta, Georgia.

2. That accordingly, the Southern Railway Company be ordered to compensate Machinist Knight in the amount of eight (8) hours pro rata pay for November 4, 1965, his birthday.

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Company, hereinafter referred to as the Carrier, maintains a locomotive repair shop at Atlanta, Georgia, known as Pegram Shop. Machinist R. M. Knight, hereinafter referred to as the Claimant, is regularly assigned at Pegram Shop Monday through Friday, rest days Saturday and Sunday.

The birthday of the Claimant fell on Thursday, November 4, 1965, which date was also during his assigned vacation period.

Therefore, the Claimant qualified under the Agreement for Birthday-Holiday pay which has been declined by the Carrier.

This dispute has been handled with the Carrier, up to and including the highest designated officer thereof to whom such appeals are subject to be made, and who has declined to make any adjustment.

The Agreement of March 1, 1926 and the Agreement of August 21, 1954 as amended by the Agreement of August 19, 1960 and later amended by the Agreement of April 3, 1965, are controlling.

POSITION OF EMPLOYES: The Employes submit and contend that the Agreement of April 3, 1965, particularly Article III, Section 6, (a), (b) and (c), are violated so long as the Carrier declines payment of the instant claim.

CONCLUSION

Carrier has proven in the record before the Board that Article III, Section 6, paragraph (a) of the April 3, 1965 agreement was not violated as alleged. Neither the provisions of that agreement nor the provisions of any other agreement between the parties supports the claim presented. Claimant has been paid all he is entitled to, and he has no contract right to the additional compensation demanded in his behalf. The Association as the proponent has not assumed the burden of proof, and it cannot do so. In this connection, Carrier directs attention to notice served on it by the employes on May 31, 1963 under Section 6 of the Railway Labor Act, in particular, Section 2 of Article I–Vacations contained in Appendix A attached thereto (Carrier's Exhibit A), in which the employes proposed adoption of a rule providing that they be paid for holidays falling on a work day of their regularly assigned work week during the period of their assigned vacation. Like notices were served on most of the nation's Carriers. As evidenced herein, the Carriers declined to agree to such a rule, and Emergency Board No. 162 recommended against adoption of such a rule by the parties negotiating on a joint national basis. The real meaning and intent of the language of the April 3, 1965 agreement, insofar as it relates to an employe's birthday falling on a work day of his regularly assigned work week during the period he is on vacation, is reflected by interpretations placed upon such language of the agreement by both management and labor representatives who participated in negotiation of the same on a joint national basis.

It is, therefore, evident that presentation of claim to the Board constitutes nothing more than an attempt by the Association to obtain by an award of the National Railroad Adjustment Board a rule which it was unable to obtain for the employes it represents in the usual manner provided for under Section 6 of the Railway Labor Act. The Board will not be a party to any such scheme. It is prohibited from doing so under the provisions of the Railway Labor Act.

In view of all the evidence of record, the Board cannot do other than make a denial award.

(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 were given due notice of hearing thereon.

The historical background leading up to the present situation pertaining to the disputes now before us for disposition clearly evidences the validity of the often repeated warning of experienced and knowledgeable arbitrators concerning the hazards involved in disregarding the time-tested value of following the doctrine of stare decisis when interpreting the provisions of

collectively negotiated contracts, to which employers and employes are the parties. This is especially true when it is considered that the agreements are national in scope, involving practically all — if not all — the railroads of the nation, and practically all — if not all — of the non-operating labor unions.

In our analysis and discussion of this record, we will not include all the prior awards referred to by the parties and their representatives, but we will discuss the awards that are extremely significant in our endeavor to arrive at a judgment which will, hopefully, lay to rest an issue which at the outset seemed relatively simple but, because of conflicting interpretations, has expanded far beyond anything that could be considered reasonable.

Awards 5230, 5414, 5442, 5454 and 5468, all deny identical claims, basing their decision on the same or substantially the same reasons. Award 5251 holds otherwise, stating that Award 5230 is "palpably erroneous." Subsequently, Award 5328 was rendered, reaffirming the conclusions asserted in Award 5230 and rejecting the contrary opinions set forth in Award 5251. Then Awards 5414, 5442, 5454 and 5468 accepted the precedent established by Award 5230, and reaffirmed the principles therein enunciated, thus by inference and effect rejecting the contrary conclusions reached in Award 5251. The preponderance of the awards heretofore rendered support the carrier's contentions, and for purposes of precedent, 5251 has been overruled and set aside by Awards 5328, 5414, 5442, 5454 and 5468. The facts, evidence and argument presented in the docket before us cannot be distinguished from those presented in the awards just referred to. It follows, therefore, that the issue has been disposed of and no useful purpose would be served even if there was some debatable argument for doing so — which there is not — by disturbing the precedent now firmly established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

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

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