

Award No. 5595

Docket No. 5333

2-SP(PL)-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the Southern Pacific Company violated the Controlling Agreement, particularly Article II, Section 6, Paragraph (a), of November 21, 1964 Agreement.

(2) That accordingly the Southern Pacific Railroad Company compensate Freight Car Painter, Herman Santos-Coy eight (8) hours at the straight time rate of pay or an additional day off with pay, for his birthday while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Freight Car Painter Herman Santos-Coy, hereinafter referred to as the Claimant, was regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as Carrier, as such in Carrier's Car Shop No. 9 at Sacramento General Shops, with work week Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1966 vacation January 3 through January 28, 1966, both dates inclusive, returning to service Monday, January 31, 1966. Claimant's birthday was Tuesday, January 4, 1966, 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, January 4, 1966.

Claim was filed with proper officer of the Carrier under date of February 23, 1966, contending that Claimant was entitled to eight (8) hours' Birthday Holiday compensation for his birthday, January 4th, 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.

It is here noted that the above-quoted provision is identical with the same section of the August 21, 1954 agreement with the exception of the phrase, 'and shall be counted as a vacation day.' We are of the opinion that the intent of this section, particularly when considered in light of the above-quoted phrase, was to provide that when a holiday occurred on what would ordinarily have been a workday of a work week, such holiday was to be considered as a workday of the period of the vacation week, and was to be compensated for as such.

We are of the further opinion that the proper application of this rule provides for five (5) days' vacation pay during those vacation periods when a holiday occurs on a workday of such regularly assigned work week.

For the reasons stated these claims lack merit."

See also this Division's Awards 2124, 2277, 2284 and 2291.

One of the latest decisions, Fourth Division Award 2169, insofar as it relates to the same circumstances, practices on this property, and types of rules as those involved herein, held in pertinent part:

"In summary, in the absence of any clear showing why a birthday-holiday should be construed differently than any other of the contractually recognized holidays in this industry, and in the absence of any effective refutation of the accepted construction that a holiday occurring during a vacation period is recognized as a vacation day and paid for as part of the earned vacation, and not independently as a holiday, the Division has no recourse but to deny the claim."

The principles involving the foregoing have been fully reviewed with Petitioner's representative. It is, therefore, evident that reliance is being placed on that portion of Section 6(a), Article II-Holidays of the Agreement of November 21, 1964, reading:

"... 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.)

As stated above, the quoted portion of the latter rule is not applicable in the instant case since (a) the birthday involved did not fall on other than a workday of the claimant's workweek, and (b) the claimant would not have been entitled to any other pay for that day under any other agreement, practice or understanding in effect on this property. Moreover, claimant is not assigned to work any holidays occurring during his regular work-week.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support, and requests that it be denied.

(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 issue herein is whether or not Claimant, a regularly assigned Freight Car Painter, is entitled to 8 hours' straight time pay (or an additional day off with pay) in addition to his vacation pay for Claimant's birthday falling on a workday of a workweek during Claimant's vacation.

Petitioner's position is that the November 21, 1964 Agreement, Article II, Section 6(a), (c) and (f) thereof, authorize such payment or additional day off with pay and it is immaterial whether Claimant's birthday falls on a work day of his workweek, or on other than a work day of his workweek; that said birthday-holiday is a guaranteed paid holiday, and he is thus entitled to such additional day's pay while on vacation, or he can select another day for his birthday-holiday; that Section 3, Article 1 of the August 21, 1954 Agreement, raised as a defense by Carrier, has no application to a birthday-holiday inasmuch as it is limited to the 7 holidays specified therein or a day substituted or observed in place of the said enumerated 7 holidays.

This Board was confronted with a similar issue and similar agreements in Award Nos. 5230, 5414, 5454 and 5468. As was said in Award No. 5230 (Weston), involving the same agreement of November 21, 1964:

"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 employe's regular workweek. 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 employes 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."

Therefore, we feel that said Award Nos. 5230, 5414, 5454 and 5468 are controlling in this instant dispute and, not finding them palpably erroneous, we are compelled to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1968.

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