

Award No. 5612
Docket No. 5367
2-TRRAofStL-MA-'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. 25, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Terminal Railroad Association of St. Louis violated the Memorandum Agreement of September 1, 1950, particularly Rule 6(c), and the Agreement of February 4, 1965, when they denied birthday holiday pay to R. E. Tracy, Machinist, for Friday, October 29, 1965, St. Louis, Missouri.

2. That accordingly, the Terminal Railroad Association of St. Louis be ordered to compensate Machinist Tracy in the amount of eight (8) hours at punitive rate for October 29, 1965, for working his birthday holiday, which was also his rest day.

EMPLOYEES' STATEMENT OF FACTS: The Terminal Railroad Association of St. Louis, hereinafter referred to as the Carrier, maintains a Diesel Shop at 14th Street, St. Louis, Missouri, where R. E. Tracy, hereinafter referred to as the Claimant, is employed as a Machinist, hours, 7:00 A. M. to 3:00 P. M.; work week, Saturday through Wednesday; rest days, Thursday and Friday.

On Friday, October 29, 1965, the Claimant was called in to perform work on his rest day, which was also the Claimant's birthday holiday. The Claimant received pay in the amount of eight (8) hours at the pro rata rate for his birthday holiday and eight (8) hours at the punitive rate for working his rest day; however, although the Claimant qualified under the Agreement, the Carrier declined to pay him eight (8) hours at the punitive rate for working his birthday holiday, which constitutes the basis of this claim.

This matter has been handled up to and including the highest designated officer of the Carrier who has declined it.

The Memorandum Agreement of September 1, 1950, particularly Article II, Section 6 (a), (b), and (c), reading:

In the Telegraphers' Agreement we find the following language:

'RULE 7. SECTION 1

(m) - Service on Rest Days:

1. This paragraph (m) is for the sole purpose of determining the compensation for employes who are required to work on their assigned rest days. It is not to be used to create, enlarge or take away any rights or obligations which the carrier or the employes have by virtue of other rules in this agreement. . . . ' (Emphasis ours.)

We infer from the above language that the parties agreed that in addition to the employe being paid for work performed on his assigned rest day, he was also entitled, in addition thereto, to receive any and all rights and/or benefits that may be due to him 'by virtue of other rules in this agreement.'

We do NOT find similar language in the agreement before us."

The above-quoted language also applies in the instant dispute.

The Carrier has shown that Claimant Tracy was compensated for service on his birthday, which was also a rest day, in exactly the same manner as he would have been compensated had service been performed on a legal holiday, which was a rest day, as specifically provided for in Article II, Section 6(g) of the February 4, 1965 Agreement.

Without prejudice to our position as to the possibility of a time limit violation by the Employes, it is our position that the claim is wholly without merit and should be denied.

All data submitted in support of the Carrier's position has been presented to the authorized representative of the Machinists and made a part of the particular question in dispute.

(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 fundamental issue in this case is the same as that considered in Awards 5331, 5332 and 5405 among others, which arose out of like disputes under corresponding provisions of similar agreements. Accordingly, we must conclude that the question of compensation for work on a holiday which is

coincidentally a rest day, has been thoroughly considered with the same determination in all but a handful of cases which have been cited herein by the Carrier. The record here does not convince us that the great majority of awards are in error or that the majority view should not be applicable in the present case. Hence, the claim will be sustained.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.