



Award No. 5645
Docket No. 5547
2-CNO&TP-MA-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Cincinnati, New Orleans and Texas Pacific Railway Company violated the Agreement of April 3, 1965, when they denied Birthday-Holiday pay to D. L. Brown, Machinist, Thursday, September 29, 1966 at Chattanooga, Tennessee.

2. That accordingly the Southern Railway Company be ordered to compensate Machinist Brown in the amount of eight (8) hours pro rata pay for September 29, 1966.

EMPLOYEES' STATEMENT OF FACTS: Machinist D. L. Brown, hereinafter referred to as the Claimant, was regularly employed by the Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the Carrier, as a Machinist in the Carrier's Diesel Shop at Chattanooga, Tennessee, with work week Monday through Friday, rest days Saturday and Sunday.

Claimant took his 1965 vacation September 26 through October 7, both dates inclusive, returning to service Monday, October 10, 1966. Claimant's birthday was Thursday, September 29th, 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, Thursday, September 29th.

Claim was filed with proper officer of the Carrier under date of November 10, 1966, contending that Claimant was entitled to eight (8) hours' Birthday-Holiday compensation for his birthday, September 29th, 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.

connection, Carrier directs attention to notice served on it by the employees 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 employees 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 employee'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 employees 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. See Second Division Awards 5230, 5231, 5232 and 5233.

(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 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 were given due notice of hearing thereon.

Claimant took his 1966 vacation September 26 through October 7. His birthday fell on Thursday, September 29, a workday of his regularly assigned workweek, during his vacation period. He was paid a day's vacation pay for September 29, but was denied an additional day's pay for his birthday. The denial has resulted in this claim.

A careful review of prior Awards on the question involved in this dispute emphatically discloses that this issue has been well settled. In denial Award 5414 (by this referee) this Board followed Award 5230 (Weston). Since Award 5414 there has been an unwavering line of denial awards on this question, including Award 5454 (Coburn) and 5468 (Ives).

In accordance with the cited Awards, this Claim 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 20th day of March 1969.