



Award No. 5755

Docket No. 5508

2-SP-MA '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist J. C. Christensen (hereinafter referred to as Claimant), was improperly compensated under applicable terms of current controlling agreements while on vacation.
2. That accordingly, the Carrier be ordered to additionally compensate Claimant in the amount of eight (8) hours' pay at the pro rata rate for the date of July 27, 1966, the date of Claimant's birthday falling on a workday of his assigned work-week while on vacation.

EMPLOYEES' STATEMENT OF FACTS: Claimant is regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as Carrier, as a machinist at Carrier's System Maintenance of Way Repair Shop, West Oakland, California, with a workweek of Monday thru Friday, rest days Saturday and Sunday.

Claimant's birthday was Wednesday, July 27, 1966, a vacation day of his scheduled vacation period, for which he was paid a day's vacation pay. However, Carrier declined to allow him birthday holiday compensation for the day, Wednesday, July 27, 1966.

Claim was filed with the proper officer of the Carrier under date of September 1, 1966, contending that Claimant was entitled to eight (8) hours' Birthday Holiday compensation for his birthday, July 27, 1966, in addition to vacation pay received for that day, and claim was subsequently handled up to and including the highest Carrier officer designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective April 16, 1942 as subsequently amended by the February 4, 1965 Agreement, is controlling.

"Section 2. Section 3 of Article 1 of the Agreement of August 21, 1954, is hereby further amended effective January 1, 1967, to read as follows:

"When any of the recognized holidays, as defined in Article III of this notice, occurs during an employee's vacation period, the following shall apply:

"(a) If the holiday falls on a work day of the employee's job assignment in the case of an employee having a job assignment, or on a work day of the position on which the employee last worked before the holiday in the case of an employee not having a job assignment, then:

"(1) If such employee is not assigned in any manner to work on the holiday, the holiday shall not be considered as a vacation day of the period for which the employee is entitled to vacation, such vacation period shall be extended accordingly, and the employee shall be entitled to his holiday pay for such day."

(Article III, referred to above, includes "Employee's Birthday.")

The proposal quoted above seeks to secure the same additional pay for claimant that Petitioner seeks in the instant claim, proving beyond any doubt that existing Agreement rules do not provide for said payment and that Petitioner is fully aware of the fact. Any other determination places Petitioner in the pointless position of seeking something already possessed.

CONCLUSION

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

(Exhibit 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 waived right of appearance at hearing thereon.

Claimant was regularly assigned during the period in question to position of Machinist at Carrier's System MofW Shop at Oakland, California, with hours of assignment 7:30 A.M.-4:00 P.M. (30-minute lunch period), rest days Saturday, Sunday and Holidays. He was scheduled for and observed his paid vacation July 1 to August 1, 1966, inclusive, as scheduled. His birthday, Wednesday, July 27, 1966 would have been a regularly as-

signed workday for him if he had not been scheduled off for his earned vacation with pay as provided in the applicable Vacation Agreement.

Carrier treated the birthday in the same manner as the seven recognized legal holidays that fall on a workday of an employee's work-week during his scheduled vacation period as provided in Article I, Section 3, Agreement August 21, 1954 and practices thereunder. Claim is made for an additional 8-hour day at the pro rata rate as premium pay for Claimant's birthday-holiday and was denied by Carrier.

The fundamental issue in this case is, as Carrier states, whether or not Claimant is entitled to a second payment of eight hours at the pro rata rate of pay for his birthday which fell on a workday of his work-week during his scheduled vacation period.

The same issue was before the Division in Dockets 5506, 5507 and was decided adversely to Carrier's contentions by sustaining Awards 5753, 5754, respectively. See also, Docket 5516, Award No. 5751.

Claimant was improperly compensated while on vacation.

A W A R D

Claim (1) sustained;

Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.