



Award No. 5756

Docket No. 5509

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 Motor Car Mechanic Charles B. Williams, hereinafter referred to as the claimant, was improperly compensated under applicable terms of the current controlling agreements while on vacation.
2. That accordingly, the Carrier be ordered to additionally compensate claimant in the amount of eight (8) hours at the pro rata rate for the date of August 26, 1966, claimant's birthday.

EMPLOYEES' STATEMENT OF FACTS: Claimant is regularly assigned at Carrier's Tucson Automotive and Work Equipment Shop, with a bulletin assigned workweek of Monday thru Friday, Saturday-Sunday rest days.

Claimant was on his scheduled vacation on the date of August 26, 1966, which date was a workday of his bulletin assigned workweek, also Claimant's Birthday-Holiday.

While Claimant was on his scheduled vacation his position was filled each and every day of his assignment's workweek. The employe filling the assignment was paid eight (8) hours at straight time rate while so used.

The record discloses that while on vacation Claimant was compensated eight (8) hours pay at pro rata rate for the date of August 26, 1966, as a day of his scheduled vacation, but was denied "an additional day's pay" for his Birthday-Holiday falling on the same date, as contemplated under applicable provisions of Article II, Section 6, of the February 4, 1965 Agreement.

This dispute has been handled up to and with the highest Carrier officer designated to handle such matters, with the result no adjustment can be effected on the property.

The National Agreements dated December 17, 1941 (Vacation Agreement as amended), and February 4, 1965, are controlling.

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.

The 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 in position of Machinist at Carrier's Tucson A&WE Shop at Tucson, Arizona, rest days Saturday, Sunday and Holidays. He was scheduled for and observed his paid vacation August 1 to 26, 1966, inclusive, as scheduled. His birthday, Friday, August 26, 1966 would have been a regularly assigned 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, 5508 and was decided adversely to Carrier's contentions by sustaining Awards 5753, 5754 and 5755, 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.

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