



Award No. 5765

Docket No. 5599

2-GN-MA '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Carrier violated the agreement between the parties when it failed to properly compensate Machinists R. L. Schaller, F. W. Gratke and D. D. Shiflett eight (8) hours birthday-holiday pay while on vacation on July 22, 1966; July 28, 1966; and September 7, 1966, respectively.
2. The Carrier now be required to compensate Machinists Schaller, Gratke and Shiflett eight (8) hours at the pro rata rate of pay for July 22, 1966; July 28, 1966; and September 7, 1966, respectively, in addition to the amount already received.

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.

This case presents the same issue as in Award No. 5764; Is a qualified employe whose birthday-holiday falls on a day within the vacation period contractually entitled to vacation pay plus birthday-holiday pay for the day. The pertinent contractual provision is Article II of the February 4, 1965 Agreement as it was in our recent Award Nos. 5751 through 5757. For reasons stated in our Award No. 5764 we will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: CHARLES C. McCARTHY
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.

DISSENT OF CARRIER MEMBERS TO AWARD 5765

The findings merely note, without analysis, that there are conflicting awards on this subject and then embrace the result in recent Awards 5751 through 5757.

In point of fact, ninety-two awards had been rendered by eight different Referees denying similar claims; twenty-nine decisions by three Referees had resulted in sustaining awards.

In such circumstances, the weight of authority is certainly substantial. The Referee did not merely choose between balanced lines of authority; he opted for what can only be characterized as the distinctly minority view of the subject.

The majority view is not invariably right; but it appears to us that when a Referee departs from the weight of authority he has an obligation to explain his reasoning in so doing. He has not done so here; and the sole awards he relied on specifically disclaimed any effort to even comment on the prior Awards. (See Award 5751)

The findings leave the impression that only Awards 5751 through 5757 were examined; that the prior awards representing the serious and substantial views of a number of Referees were ignored; and merely the awards most recent in time were casually followed. It is difficult to see how this approach will avoid the compounding of "existing conflicts", the professed purpose of the Referee's decision.

The Awards are contrary to the great weight of authority on the subject and we dissent.

/s/ W. R. HARRIS
W. R. Harris

/s/ H. S. TANSLEY
H. S. Tansley

/s/ H. F. M. BRAIDWOOD
H. F. M. Braidwood

/s/ H. K. HAGERMAN
H. K. Hagerman

/s/ P. R. HUMPHREYS
P. R. Humphreys