



Award No. 5770

Docket No. 5522

2-SOU-CM '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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Article III, Section 6, paragraph (a) of the April 3, 1965 Agreement.
2. That accordingly the Carrier compensate Carman R. F. Clement, Asheville, North Carolina, eight (8) hours' pay at the pro rata rate of pay for his birthday while on vacation, May 17, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carman R. F. Clement, Asheville, North Carolina, hereinafter referred to as the claimant, was regularly employed by Southern Railway Company, hereinafter referred to as the carrier, as a carman in carrier's shop at Asheville, North Carolina, his work week being Saturday through Wednesday with rest days on Thursday and Friday.

Beginning May 9, 1966 through May 20, 1966, claimant was on his assigned vacation and during this period of two weeks his birthday occurred on May 17, 1966. Claimant's birthday, May 17, 1966, was within his work week and during his vacation period which fully substantiates his claim, since he qualified under the provisions of the agreement. Carrier, however, declined to pay the eight (8) hours at straight time rate for claimant's birthday holiday. This act on the part of carrier constitutes a violation of the April 3, 1965 agreement which is the basis for said claim.

Claim was filed with the proper officer of carrier under date of July 12, 1966, contending that claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday, May 17, 1966, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of the carrier designated to handle such claims, all of whom declined to make a satisfactory adjustment.

The agreement effective June 1, 1960, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that carrier erred when it failed and refused to allow claimant eight (8) hours birthday

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 brotherhood 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 these circumstances, the board cannot do other than make a denial award. See Second Division Awards 5230, 5231, 5232 and 5233.

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 were given due notice of hearing thereon.

This is the first of a series of dockets (5522, 5523, 5526, 5527, 5533, 5536) from this property. All of them put in issue claims for birthday holiday compensation for a regularly assigned employee whose birthday fell on a work day of his workweek while he was on vacation.

Since Claimant was not entitled to take an additional day off with pay as vacation, his claim is for an additional day's pay to compensate for his birthday-holiday, after meeting the qualifying requirements of Section 6(c), in accordance with Article III of the April 3, 1965 Mediation Agreement on this property.

Article III—Holidays, in the aforementioned Mediation Agreement, is the same as Article II of the Mediation Agreements dated November 21, 1964 and February 4, 1965, which have been repeatedly before the Division on claims for an additional day's pay, in lieu of an additional day off with pay, due to a vacation.

The lead paragraph of Section 6 clearly sets forth the provision for an additional day off with pay, or an additional day's pay, on the birthday of each employee if he meets all qualifying requirements of Section 6 without more.

Next, as provided in Section 6(a) if a regularly assigned employee's birthday falls on his work day of the workweek, he shall be given the day off with pay; if his birthday falls on a work day of his workweek when on vacation, he obviously cannot be given the day off with pay, so the question is whether or not "he shall receive eight (8) hours' pay at the pro rata rate of the position to which assigned, in addition to any pay to which he is otherwise entitled for that day, if any."

If, as Carrier contends in this docket, only a birthday-holiday, that falls on a vacationing employee's rest days, is compensable, we are not able to account for a lot of needless language when the thought could have been most

clearly expressed if the word "rest" had been substituted for "work" before the word "day" without more in connection with the birthday of an employee which "falls" on other than a work day of the workweek". Those skilled bargainers who hammered out the language for Section 6 are best known for terse language and a meaningful choice of words, so we think they said just what they meant to say when they wrote that, "A regularly assigned employee shall qualify for the additional day off or pay in lieu thereof", as provided in Section 6(c).

Carrier has also drawn our attention to the manner in which the same language is interpreted and applied under Agreements for Clerks, Maintenance of Way; Railroad Telegraphers, Railroad Signalmen and the Hotel and Restaurant employees; but the Agreement with which we are here dealing was made for Shop Craft Employees whose rates of pay, working conditions, and other conditions, of employment bear no proper relationship to the class of employees who are subject to the mentioned Agreements. A Clerk is not a Carman and a Carman is not a Clerk, just for purposes of distinction here.

Claimant is entitled to receive eight (8) hours' pay at the pro rata rate of the position to which assigned, as claimed, for his birthday-holiday.

Therefore, Carrier erred when it failed and refused to allow Claimant eight (8) hours birthday-holiday compensation in addition to vacation pay allowed for that day.

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 19th day of September, 1969.

DISSENT OF CARRIER MEMBERS TO AWARDS NOS. 5769-5779

These awards are completely erroneous and have no precedent value whatsoever.

The overwhelming number of prior awards (92) issued by eight different referees — all in favor of the carriers' position — would indicate a callous disregard for stare decisis, especially so when the neutral makes no effort to show where the prior awards were palpably erroneous.

A weak attempt is made to sustain the neutral's position when he indicates that the parties used "needless language" in the agreement and he suggested what language **should have been used**.

It is abundantly clear that this neutral went outside of the current agreement, governing the parties involved to sustain claims which had absolutely no merit, as the decision to sustain the instant claims is based on conjecture, misinterpretation or misapplication of the contract language.

Therefore, we most vigorously dissent.

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

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

/s/ J. R. MATHIEU
J. R. Mathieu

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

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