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 EMPLOYES' DEPARTMENT, AFL-CIO

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated Article III, Section 6, paragraph (a) of the April 3, 1965 Agreement.

2. That accordingly the Carrier compensate Carman Painter J. R. Phillips, Chattanooga, Tennessee, eight (8) hours' pay at the pro rata rate of pay for his birthday while on vacation, June 24, 1966.

EMPLOYES' STATEMENT OF FACTS: Carman Painter J. R. Phillips, Chattanooga, Tennessee, hereinafter referred to as the claimant, was regularly employed by Southern Railway Company (Cincinnati, New Orleans & Texas Pacific Railway Company), hereinafter referred to as the carrier, as a carman painter in carrier's shop at Chattanooga, Tennessee, his work week being Monday through Friday with rest days of Saturday and Sunday.

Beginning June 20, 1966, through July 1, 1966, claimant was on his assigned vacation and during this period of two weeks his birthday occurred on June 24, 1966. Claimant's birthday, June 24, 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 August 16, 1966, contending that claimant was entitled to eight (8) hours birthday holiday compensation for his birthday, June 24, 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.

signed 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 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.

Carrier erred when it failed and refused to allow Claimant eight (8) hours' birthday-holiday compensation in addition to vacation pay.

AWARD

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

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