Award No. 5772
Docket No. 5525
2-SP(PL)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 EMPLOYES' DEPARTMENT, AFL-CIO

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That Machinist C. J. Bledsoe (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 pro rata for the date of September 26, 1966, Claimant's Birthday-Holiday.

EMPLOYES' STATEMENT OF FACTS: Claimant is regularly assiged at carrier's System Maintenance of Way Repair Shop, West Oakland, with a bulletin assigned workweek of Monday thru Friday, rest days of Saturday and Sunday.

Claimant was on his scheduled vacation on the date of September 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 September 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.

That National Agreements dated December 17, 1941 (vacation agreement as amended), and February 4, 1965, are 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 employe's vacation period, the following shall apply:

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

(1) If such employe 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 employe is entitled to vacation, such vacation period shall be extended accordingly, and the employe shall be entitled to his holiday pay for such day."

(Article III, referred to above, includes "Employe'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.

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.

We learn from the Employes' submission in this docket that:

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

Despite what Carrier says is a lack of understanding on its part, the above reference is clearly an attempt to tie Article II — Holidays, Section 6(g) and Article 7(a) — Vacation Agreement together, in an outtgoing attempt to convince the Division, over Carrier's protest, that the claims are meritorious.

Carrier is needlessly disturbed when it urges this Division to ignore the reference to "filling of claimant's position while he observed his scheduled vacation period" and gives as the reason that "this was not handled in the usual manner on the property".

We are yet to be persuaded, in fact or by logic, that Article 7(a) — Vacation Agreement, applies to craft employments when birthday-holiday pay practices are in contention.

This Division has again reviewed the other submissions from this property for other points of distinction in this Docket, or error in our earlier Awards, and finding none, Awards 5753, 5754, 5755, 5756, 5757 are hereby reaffirmed as controlling in this Docket.

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
M. R. Mathieu

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

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

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