



Award No. 5778

Docket No. 5533

2-SOU-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern 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 the following Carmen at Hayne Shop, Spartanburg, South Carolina, eight (8) hours' pay at the pro rata rate of pay on their respective birthdays while on vacation; Carman A. C. Still, Jr., July 19, 1966; Carman R. E. Newman, July 29, 1966; Carman F. McElrath, August 5, 1966; Carman N. D. Sheehan, August 12, 1966; and Carman H. A. Frazier, July 29, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carmen A. C. Still, Jr., R. E. Newman, F. McElrath, N. D. Sheehan and H. A. Frazier, hereinafter referred to as the claimants, were regularly employed by the Southern Railway Company, hereinafter referred to as the carrier, as carmen in carrier's shop at Hayne Shop, Spartanburg, South Carolina, their work week being Monday through Friday with rest days on Saturday and Sunday.

Beginning July 18, 1966, through August 12, 1966, the claimants were on group vacation and during this period of four (4) weeks their birthdays occurred on the dates as listed in item 2 of the claim of employees. Claimants' birthdays on the respective dates indicated were within their work week and during their vacation period which fully substantiates their claims, since they qualified under the provisions of the agreement. Carrier, however, declined to pay the eight (8) hours at straight time rate for claimants' birthday holidays. This act on the part of carrier constitutes a violation of the April 3, 1965 agreement which is the basis for said claims.

Claims were filed with the proper officer of the carrier under date of August 27, 1966, contending that claimants were entitled to eight (8) hours' birthday holiday compensation for their birthdays, as shown in item 2 of claim of employees, in addition to vacation pay received for these dates, and subsequently handled up to and including the highest officer of carrier designated to handle such claims, all of whom declined to make a satisfactory adjustment.

In view of the parties' failure to deal specifically and unambiguously with the subject in the 1964 Agreement in the face of the compelling history of denial awards and Emergency Board opinions referred to above, it is our conclusion that this claim for additional payment for a birthday-holiday that fell on a Thursday, one of Claimant's work days must be denied. In reaching this decision, we carefully distinguish the present case from the situation where a birthday occurs on other than a work day of an assigned workweek.

See also Second Division Awards 5231, 5232 and 5233 in which the Board denied identical claims.

The awards quoted and cited above fully support carrier's interpretation of the controlling agreement and its position in the instant dispute. The board should, without more, made a denial award.

CONCLUSION: Carrier has proven in the record before the board that article III, Section 6, paragraph (a) of the April 3, 1965 agreement was **not** violated as alleged. Neither the provisions of that agreement nor the provisions of any other agreement between the parties supports the claims presented. Claimants have been paid all they are entitled to and they have no contract right to the additional compensation demanded in their behalf. The brotherhood as the proponent, has not assumed the burden of proof and it cannot do so. In this connection, carrier directs attention to notice served on it by the employees on May 31, 1963 under section 6 of the Railway Labor Act, in particular, Section 2 of Article I — Vacations contained in Appendix A attached thereto in which the employees' proposed adoption of a rule providing that they be paid for holidays falling on a work day of their regularly assigned 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 claims 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 view of all the evidence of record, 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 Claimants eight (8) hours' birthday-holiday compensation in addition to vacation pay.

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.