Award No. 5818
Docket No. 5648
2-JT-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. 50, RAILWAY EMPLOYES' DEPARTMENT, AFL — CIO (Carmen)

JACKSONVILLE TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Jacksonville Terminal Company violated Article II, Section 6 of the November 21, 1964 Agreement.

2. That accordingly the Jacksonville Terminal Company compensate Carman J. D. Stapleton eight (8) hours at the pro rata rate of pay for his birthday, September 15, 1966, while on vacation.

EMPLOYES' STATEMENT OF FACTS: Carman J. D. Stapleton, hereinafter referred to as the claimant, was regularly employed by the Jacksonville Terminal Company, hereinafter referred to as carrier, as a carman at carrier's passenger station at Jacksonville, Florida, with work week Tuesday through Saturday, rest days Sunday and Monday.

Claimant took two weeks vacation September 13 through September 24, 1966, both dates inclusive, returning to service Tuesday, September 27, 1966. Claimant's birthday was Thursday, September 15th, a vacation day of his vacation period for which he was paid a day's vacation pay. However, carrier failed to allow him birthday holiday compensation for the day, Thursday, September 15th.

Claim was filed with proper officer of the carrier under date of October 31, 1966, contending that claimant was entitled to eight (8) hours birthday holiday compensation for his birthday, September 15th, in addition to vacation pay received for that day, and subsequently handled up to and including the highest officer of carrier designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective April 16, 1939, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant eight (8) hours birthday holiday compensation for his birthday, September 15, 1966, in addition to vacation pay allowed for the day.

clusion that the 1964 agreement was designed to guarantee the employees an additional day's pay in such situations.

The National Railroad Adjustment Board is empowered only to decide the dispute herein accordance with the agreements between the parties thereto and to grant the claim herein would require this board to disregard the agreements and impose upon carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The board has no jurisdiction or authority to take such action.

Carrier has shown—

There is no agreement provision which permits the compensation herein claimed.

There has been no rules violation.

Claimant's birthday was properly considered a work day of the period during which he was on vacation.

Claimant was not deprived of a day's vacation or in a worse position than he would have been if he had worked because had he not been on vacation he would have been given the day off with pay.

Claimant was properly compensated for the holiday at eight hours' pro rata pay.

Considering these facts, your board has no alternative but to deny the claim herein.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all 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.

Claimant was regularly employed by the Carrier with a work week of Tuesday through Saturday, rest days Sunday and Monday. He took two weeks vacation September 13 through September 24, 1966, both dates inclusive, returning to service Tuesday, September 27, 1966. His birthday was Thursday, September 15th, a vacation day of his vacation period for which he was paid a day's vacation pay. The instant claim has been filed demanding eight hours Birthday Holiday compensation for his birthday in addition to vacation pay already received. The Organization invokes Article II of the November 21, 1964 Agreement which reads in pertinent parts, as follows:

"Article II—Holidays

Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employees covered by this Agreement is hereby further amended by the addition of the following Section 6:

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965, each hourly, daily and weekly

rated employee shall receive one additional day off with pay, or an additional day's pay, on each such employee's birthday, as hereinafter provided.

(a) For regularly assigned employees, if an employee's birthday falls on a work day of the work week of the individual employee he shall be given the day off with pay; if an employee's birthday falls on other than a work day of the work week of the individual employee, he shall receive eight hours pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any.

(c) A regularly assigned employee shall qualify for the additional day off or pay in lieu thereof if compensation paid him by the Carrier is credited to the work days immediately preceding and following his birthday, or if an employee is not assigned to work but is available for service on such days. If the employee's birthday falls on the last day of a regularly assigned employee's work week, the first work day following his rest days shall be considered the work day immediately following. If the employee's birthday falls on the first work day of his work week, the last work day of the preceding work week shall be considered the work day immediately preceding his birthday.

(f) If an employee's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purpose of this Section."

The main thrust of the Carrier's argument is that when the birthday holiday was negotiated in 1964, not only was Article 7(a) of the December 17, 1941 Vacation Agreement in full force and effect but Article I—Vacations, Section 3, of the August 21, 1954 Agreement was also in effect; that this particular Article provides specifically for a method of payment for holidays which fall during a vacation period. The Article provides:

"Section 3. When, during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

The issue presented in this case is not a new one. It has been the subject of controversy for some time. We are aware of the many conflicting awards which have been rendered by the Board, and suffice it say, we have examined the key awards very carefully on both sides of the issue. We can see no useful purpose being served by analyzing once again all the basic Agreements and Amendments thereto, because to do so would be a duplication of effort. They have been subjected to analysis and interpretation in many awards emanating from this Board. We are particularly impressed by the analytical approach, the reasoning, the logic and the comprehensive review of the entire subject matter rendered by the Board in Award 5251. We agree that Article II, Section 6, upon which the Organization relies, is a specific Rule and as such takes precedence over Article 7(a) of the December 17,

1941 National Vacation Agreement, a general Rule. The language of Article II, Section 6 is clear and unambiguous, Clearly, the spirit, intent and meaning of the language contained therein was to give to the employees that which they are requesting in this case. We are in complete accord with Award 5251. 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 16th day of December, 1969.

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