



Award Number 5873

Docket Number 5627

2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.-C.I.O. (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk and Western Railway Company violated the controlling agreement when it denied Carman Helper F. M. McCoy, eight (8) hours' compensation at the pro rata rate for June 28, 1966, his birthday which occurred during his assigned vacation period.
2. That accordingly the Norfolk and Western Railway Company be ordered to compensate F. M. McCoy, eight (8) hours at the pro rata rate for June 28, 1966, his birthday, for said violation.

EMPLOYEES' STATEMENT OF FACTS: The aforesaid employee, hereinafter referred to as the Claimant, was regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the Carrier, as a Carman Helper at Williamson, West Virginia.

Claimant's birthday fell on a vacation day of his vacation period for which he was paid a days vacation pay. However, Carrier failed to allow him birthday holiday compensation.

Claim was filed with proper officer of the carrier under date of August 9, 1966, contending that Claimant was entitled to eight (8) hours birthday-holiday compensation for his birthday holiday, 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 satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: 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 holiday, in addition to vacation pay allowed for that day.

Article II of the November 21, 1964 Agreement reads in pertinent part 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

Article I, Section 3—August 21, 1954 Agreement—

"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."

Article 7(a), above, provides that an employee will be no better or worse off by virtue of being on vacation. On this property all holidays are considered unassigned work days, therefore, had Claimant not been on vacation, he would not have worked on his birthday and would have received one day's pay for that day.

Article I, Section 3, makes provisions for holidays which occur during an employee's regular work assignment while he is on vacation by specifically stating the day will be considered as a day of vacation.

The basic question in this dispute has been firmly settled and consistently ruled upon by the Board. In Third Division Award 9635, Referee Johnson, it was stated in pertinent part:

Under Article I, Section 3, of the Agreement of August 21, 1954, amending the Vacation Agreement of December 17, 1941, any of the seven recognized holidays (or substitutes therefor) falling within the vacation period is paid for as a vacation day, but not again as a holiday. That provision accompanied the 1954 Agreement's liberalization of regular vacation provisions."

Also see Third Division Awards 9640 and 9641, and Second Division Awards 2277, 2302, 3477, 3557, 5230, 5231, 5233, 5310 and 5311.

It is evident from the foregoing facts that: (1) Section 6(a), Article II of the November 21, 1964 Agreement does not provide for payment for holidays which fall within a vacation period. (2) The quoted portion of Section 6(a) stating "* * * 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." is not applicable as the birthday did not occur on other than a work day of the workweek of the individual, and (3) Claimant would not have been entitled to any other pay for that day under any other rule, agreement or practice on this property; therefore, the claim is without merit and should be denied by the Board.

Carrier would particularly like to call to the Board's attention Second Division Awards 5230, 5231, 5233, 5310 and 5311. These were identical claims to the one here being considered and in all cases the claims were denied. Carrier will not burden the record by quoting these awards, but a careful reading will reveal that the position is fully denied.

All matters contained herein have been subject matter of correspondence and/or conference.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This is another in a long series of claims presenting the issue of what constitutes the proper compensation of an employe, regularly assigned, whose birthday-holiday falls on a work day of the work week of that assignment during his vacation period, under the provisions of the Mediation Agreements of November 21, 1964, and February 4, 1965.

The Awards of the Board ruling on this issue are in hopeless conflict but the result has been an extensive and exhaustive exploration of the whole subject to highly competent Referees whose reasons for reaching diametrically opposite conclusions have been fully developed and set forth. It would serve no useful purpose at this late juncture to review and distinguish these Awards because that has already been adequately done. (see Award No. 5251, Referee Dolnick).

It suffices to say that we find no compelling reason for reversing that long line of authorities, beginning with Award 5230 (Referee Weston), which hold that a claim for additional payment for a birthday-holiday falling on a work day of the employe's regular assignment during his vacation period must be denied. We so hold.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April, 1970.