



Award No. 5917
Docket No. 5745
2-SP(PL)-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 114,
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(CARMEN)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company violated ARTICLE II, Section 6, of the November 21, 1964 Agreement.
2. That accordingly, the Southern Pacific Company be ordered to compensate Passenger Carman Joseph Munso eight (8) hours at the pro rata rate of his position for his birthday, December 25, 1967, while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Passenger Carman Joseph Munso, hereinafter referred to as the claimant, was regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as carrier, as such at the Sacramento general shops, Sacramento, California, with workweek Monday through Friday, rest days of Saturday, Sunday and holidays off.

Claimant took, with management consent, his last instalment of his 1967 vacation, December 18 through December 29, 1967, both dates inclusive, returning to service Tuesday, January 2, 1968. Claimant's birthday was Monday, December 25, 1967, 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, Monday, December 25th.

Claim was filed with proper officer of the carrier under date of January 15, 1968, contending that claimant was entitled to eight (8) hours' birthday-holiday compensation for his birthday, December 25th, 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, 1942, as subsequently amended, particularly by the agreement of November 21, 1964, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant eight (8) hours'

notice upon this carrier under section 6 of the Railway Labor Act, as amended, requesting certain additional benefits, including payments for holidays occurring during annual vacation. A portion of said notice reads as follows:

“Section 2. Section 3 of Article 1 of the Agreement of August 21, 1954, is hereby further amended effective January 1, 1969, to read as follows:

When any of the recognized holidays, as defined in (Article II of this Notice) occurs during an employe's vacation period, the following shall apply. The employe's vacation period shall not be extended by reason of any of the holidays falling during the vacation period but the employe shall be paid holiday pay for the holiday and also shall be paid for any work performed by him on the holiday or any work required by agreement to be performed on his position on the holiday, all in accordance with the rules applicable to holidays, in addition to his vacation pay.”

The proposed article II then lists “The Employe's Birthday” as one of the proposed recognized holidays.

The aforementioned proposals seek to secure the same additional pay for claimant that petitioner seeks in the instant claim, proving beyond any doubt that existing agreement rules and practices 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.

The new proposal clearly shows Petitioner is now properly seeking an agreement change in the manner contemplated by the Railway Labor Act, while at the same time is asking this division to furnish a sustaining award prior to the adoption by negotiation of the new rule which the division, of course, is not empowered to do.

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.

While on vacation, Claimant celebrated his birthday. This claim is for allowance of birthday-holiday compensation in addition to the vacation pay received for that day.

This question has been considered by numerous awards of this Board. We are persuaded by Award 5230 which reads in part:

“There is no sound basis for treating a birthday that falls on a work day of the employe's assigned workweek differently than any of the seven other recognized holidays insofar as the question at issue is concerned. This is true because of the language of Article II Section 6 and its history which relates back to the National Agreements of August 21, 1954,

and August 19, 1960. Article II, Section 6, added an eighth contractually recognized holiday pursuant to the recommendation of October 20, 1964 of Presidential Emergency Boards 161, 162 and 163 that an additional holiday be agreed upon to conform to "prevailing industry practice". The Emergency Board left it to the parties to decide which holiday should be added. The parties to the November 21, 1964, Agreement then agreed that the eighth holiday would be the employe's birthday.

Nowhere in Article II Section 6 is there a requirement that an extra day's pay be given for a birthday or other holiday that falls within the vacation week on a day that is a work day of the employe's regular workweek. The absence of such a provision from the 1964 Agreement is particularly significant, for by the time it had been negotiated, prior awards, interpretations and Emergency Board reports had made it abundantly clear that in the railroad industry employes will not receive additional pay when a holiday occurs during their vacation on what ordinarily would be a work day. See Second Division Awards 2277, 2302, 3477, 3518 and 3557 as well as Awards 9640 and 9641 of the Third Division."

It should be noted, moreover, that there was a September 2, 1969 amendment to the August 21, 1954 Agreement which added Section 7 (b) making specific provisions for the payment of holiday-birthday compensation in addition to vacation compensation.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1970.