Award Number 5955
Docket Number 5844
2-MP-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. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O.
(Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Carman L. P. Gossett the right to work his regular assignment on Friday, September 24, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Gossett in the amount of eight (8) hours at the punitive rate for Friday, September 24, 1965.

EMPLOYES' STATEMENT OF FACTS: Carman L. P. Gossett, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, as test rack operator in the air room, Little Rock, Arkansas, work week Monday through Friday, rest days Saturday and Sunday, hours 7:00 A.M. to 3:00 P.M.

The Claimant's birthday occurred on Friday, September 24, 1965, one of his regular work days. The Claimant was advised by bulletin that his job would be blanked on this date (September 24, 1965) account it being his birthday holiday and he was to take the day off, however, the Carrier found it necessary to fill this position on this date (September 24, 1965) but failed to comply with the rule and past practice, i.e., filling the job the same as other holidays and working the incumbent, which constitutes the basis of the claim. The Claimant's job was worked by Carman B. Paul, who is assigned by bulletin in the air room and Carman Paul performed all the duties of the test rack operator (Claimant) and was paid for that day the differential rate in pay between carman and test rack operator, therefore the Carrier did not work this holiday in line with the rules and practices of working other holidays.

This matter has been handled up to and including the highest designated officer of the Carrier who has declined to adjust it.

The Agreement of June 1, 1960, as amended, and the Agreement of November 21, 1964 are controlling.

As stated above, the birthday holiday is different from the other holidays as they are holidays for all employes covered by the Agreement. The above statement then makes it clear that "no overtime or Holiday overtime work was necessary" in that case. Similarly no overtime or holiday overtime work was necessary in the instant case before your Board. In Award 5321 the Carman in question was given his birthday holiday off with pay. The Carrier has done likewise in the instant case.

As stated by your Board in the concluding paragraph of Award 5321, holiday work for the Carman who had the birthday holiday would have been overtime work for him, since it was his birthday, but it was not holiday overtime work for any of the other Carmen assigned to work that day. Since overtime or holiday overtime work was not necessary on date of claim in this dispute, Rule 5 in the Agreement on this property including the Note thereto is "highly irrelevant" for the same reasons that reference to the train yard holiday board was highly irrelevant in the case before your Board in Award 5321.

The Employes' Statement of Claim alleges that the Carrier "violated the Agreement of November 21, 1964, when they deprived Carman L. P. Gossett the right to work on his regular assignment on Friday, September 24, 1965." Friday, September 24, 1965, was Claimant's birthday. The Agreement of November 21, 1964, states that an employe's birthday will be a holiday. Contrary to the allegation that an employe has a right to work on his birthday holiday, the Agreement of November 21, 1964, provides that employes shall receive one additional day off with pay on the employe's birthday. The Agreement does not support the claim for that reason.

The Employe's Statement of Claim also states that Claimant was deprived of the right to work "his regular assignment" on Friday, September 24, 1965." The facts do not support the claim in that the date of claim was and work hours specified in the bulletin advertising his position. Claimant was assigned to a position with work days "Monday through Friday (except holidays)." Since Friday, September 24, 1965, was a holiday for Claimant and he was not assigned to work on holidays, Friday, September 24, 1965, was not a part of "his regular assignment." For that reason he cannot have been deprived of the right to work "his regular assignment on Friday, September 24, 1965." The facts do not support the claim in that the date of claim was not included in Claimant's regular assignment.

For the reasons fully set forth herein, the claim in this docket is not supported by the rules cited and should be declined.

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.

Claimant was assigned as a carman in the air brake shop at North Little Rock, five days a week—"Monday thru Friday (except holidays)." Friday, September 24, 1965 was Claimants birthday. Carrier found it necessary to fill Claimant's position as test rack operator and did this by moving

another carman (who was lower rated), and paid that carman the wage differential.

Carrier contends that the "work in the air brake room was carried on by the other carmen in the shop all of whom had the day as an assigned work day. The shop merely worked one man short just as they do when men are absent account illness or other reasons." Moreover, Carrier asserts that there was no requirement to work an employe on his birthday holiday.

The Organization contends that under the provisions of Article II—Holidays, Section 6, paragraph (g) of the November 21, 1964 Mediation Agreement and Rule 5 of the Agreement between the parties require that if the employe's position is worked on his birthday-holiday (and is not blanked) that employe must be given an opportunity to work the position. The Board agrees.

Despite Carrier's contention that Claimant's position was not filled, the Board finds to the contrary. Another carman was required to perform the work (which was bulletined) normally performed by Claimant, and paid a differential rate. (See Awards 5523 and 5236).

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1970.

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