

Award No. 5975

Docket No. 5821

2-MP-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964 when they deprived Carman H. Long the right to work his regular assignment on March 30, 1966.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Long in the amount of eight (8) hours at the punitive rate for March 30, 1966.

EMPLOYEES' STATEMENT OF FACTS: H. Long, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, in the train yard, East Jefferson Facility, St. Louis, Missouri, and Claimant's birthday occurred on March 30, 1966, and he was instructed that his job would not work on this date account it being his birthday holiday. However, the Carrier did not blank the Claimant's job on this date (March 30, 1966), but filled it with Carman C. R. Heard, who was moved from the repair track to the Claimant's job in the train yard, and to substantiate this fact, we herewith quote Master Mechanic, Mr. J. W. McCaddon's letter of June 8, 1966, addressed to Local Chairman W. A. Dickerman:

“St. Louis, Missouri
June 8, 1966
File: 176

Mr. W. A. Dickerman
Local Chairman--Carmen
East Jefferson

Yours of May 10th, claiming time and one-half in favor of Carman H. Long account being off on his birthday.

Mr. Long was given March 30th off account his birthday and compensated eight (8) hours at pro-rata rate. His job was filled by Carman C. R. Heard, who was moved from repair track to train yard and his job (Heard's) was blanked.

erred in finding that "the Note to Rule 5 clearly provides that when positions have to be filled on holidays . . ." since the Rule does not refer to filling positions. (Emphasis ours.) It is impossible to apply the rule on the basis of positions if, for example, ten Coach Cleaners would have been assigned to work on a day on which a holiday falls if the holiday had not occurred and all ten Coach Cleaners have the same assigned duties, yet the Carrier needs and has a right to have a fewer number work on the holiday. The positions of the ten employes are identical, and all of them perform the same work. Five such positions could not be picked out as being the position to be filled. The Note to Rule 5 clearly states that the Carrier will designate the number of employes to work on the holiday and then the Local Committee selects from among these on each shift who would have been assigned to work if the day had not been a holiday in accordance with the manner in which the holiday overtime is distributed. The Carrier does not designate certain positions to be filled on a holiday, but simply advises as to the number of men needed.

In applying the Note to Rule 5 to a birthday holiday, one must keep in mind the fundamental difference between the seven recognized holidays and the birthday holiday. That difference is this: On the seven recognized holidays, the day is a holiday for all employes, whereas the day is a regularly assigned work day for all the employes except the employe who has the birthday holiday. On the seven recognized holidays, the Carrier must follow the procedure set forth in the Note to Rule 5 if any employes are needed on the holiday. The regularly assigned force works on the day in question except the employe who has the birthday holiday. The Carrier need turn to the Note to Rule 5 only if the force assigned to work that day is not adequate and the employe who has the birthday is also needed. This is the difference between the seven recognized holidays and the birthday holiday.

In the instant claim, the Note to Rule 5 comes into play only if the force assigned to work is inadequate and the employe who has the birthday is also needed. On date of claim, the force at East Jefferson consisted of 78 employes, including 28 Carmen. All except Claimant worked. The force was adequate to perform the work. The Carrier had no need to resort to the procedure set forth in the Note to Rule 5. The regular force was not augmented or increased. The men regularly assigned to work that day were instructed by the supervisors of the tasks to be performed falling within their craft at the East Jefferson facility. The foreman used the men either inside the shed or outside, depending on need. On the date of claim, Carman Heard was assigned to work that day. The Foreman may have had Carman Heard perform some of the work Carman Long (the Claimant herein) would have performed if he had not been off enjoying his birthday holiday.

The crucial point upon which this case turns is that Carman Heard was assigned to work on the second shift on March 30, 1966. Men assigned on the second shift who had March 30, 1966, as a day of their assignment protected the work. The Carrier fully complied with the Note to Rule 5. The Carrier also fully complied with the birthday holiday rule by giving Claimant the additional day off with pay.

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, a Carman employed at the Carrier's East Jefferson Passenger Facility, on the second shift (3:30 P. M.-11:30 P. M.), Tuesday through Saturday, was not assigned to work on his birthday holiday, Wednesday, March 30, 1966. Instead, he was given the day off and remunerated with 8 hours' pro rata pay. Another employe at this location, i.e., Carman C. R. Heard, who was assigned to work the second shift on that date, was transferred from the repair track to the train yard to work in claimant's place and stead.

Thus, in all essential respects, this docket is identical in principle to two similar disputes between these same parties already adjudicated by this Division in its Awards Nos. 5236 and 5523.

Where, as here, this Board's rulings on the property are squarely in point, and not seemingly erroneous, they should carry precedential impact. It follows that what was said in Award No. 5236, and affirmed in Award No. 5523, concerning the meaning and application of Article II, Section 6 (a) and (g) of the Agreement of November 21, 1964, and Note to Rule 5 of the current Schedule Agreement, also serves in this case to rationalize an affirmative holding.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1970.