Award No. 5978
Docket No. 5713
2-RDG-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Reading Company violated Article II, Section 6, paragraph (a) of the November 21, 1964 Agreement.

2. That accordingly, the Reading Company compensate Car Inspector G. F. Morgan eight (8) hours' straight time rate of pay, for his birthday while on vacation, which was denied.

EMPLOYES' STATEMENT OF FACTS: Car Inspector G. F. Morgan, hereinafter referred to as the claimant, was regularly employed by the Reading Company, hereinafter referred to as the carrier, as car inspector, Reading Terminal, Philadelphia, Pennsylvania, with workweek Wednesday through Sunday, rest days Monday and Tuesday.

Claimant took his vacation October 4 through October 8, 1967, both inclusive. Claimant, while on vacation October 6, 1967, celebrated his birthday holiday, a vacation day of his vacation period, for which he was paid a day's vacation. However, carrier failed to allow him birthday holiday compensation for the day October 6, 1967.

Claim for the additional 8 hours' straight time pay was filed with the proper officers of the carrier, up to and including the highest officer so designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective January 16, 1940, as subsequently amended, particularly by the Agreement of November 21, 1964, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant 8 hours' birthday holiday pay for his birthday October 6, 1967, in addition to vacation pay allowed him for the day.

(a) If the holiday falls on a work day of the employe's job assignment in the case of an employe having a job assignment, or on a work day of the position on which the employe last worked before the holiday in the case of an employe not having a job assignment, then:

(1) If such employe is not assigned in any manner to work on the holiday, the holiday shall not be considered as a vacation day of the period for which the employe is entitled to vacation, such vacation period shall be extended accordingly, and the employe shall be entitled to his holiday pay for such day."

While this proposal was never adopted, it is obvious that the Brotherhood was seeking the demise of the "maintenance of take-home pay" doctrine embodied in previous agreements. Carrier can readily accept the Brotherhood's desire to eliminate the principle by the negotiative process; however, such a result is not properly achieved by prostituted interpretation of existing agreements.

It is most significant to note that Article III–Holidays of the Brotherhood's Section 6 proposal utilized, for the first time in a holiday provision, the expression ". . . **guaranteed** 8 hours' pay . . .":

"ARTICLE III. HOLIDAYS

Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960 and the Agreements of November 20 and 21, 1964, and February 4, 1965, is hereby amended to read as follows:

Section 1. (a) Effective January 1, 1967, each hourly, daily or weekly rated employe **shall be guaranteed** 8 **hours' pay at the pro rata hourly rate** of the position on which he last worked before the holiday in addition to any other payments required for each of the following nine enumerated holidays . . . Employe's Birthday . . ." (Emphasis ours.)

The unadopted proposal to regard holiday compensation as "guaranteed" and the use of such an unambiguous adjective is reflective of the Brotherhood's desire to achieve a right which it does not currently possess.

Carrier submits that better analysis and well-reasoned principles mandate the denial or dismissal of the organization's repetitive attempt to derive pecuniary benefit from a fortuitous coincidence beyond the letter and intent of the November 21, 1964 Agreement and the clear precedent of Award 5230.

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.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This claim involves the same parties, Agreement and issue as in Award No. 5977. For the reason given in that Award we will deny the instant claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1970.

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