

Award No. 5983
Docket No. 5735
2-SP(PL)-(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. 114, RAILWAY EMPLOYEES'
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 Painter Herman Zahn eight (8) hours at the straight-time rate of pay for his birthday, November 6, 1967, while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Passenger Painter Herman Zahn, hereinafter referred to as the claimant, was regularly employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as carrier, as such at West Oakland, California, with work week Monday through Friday, rest days of Saturday and Sunday and holidays off.

Claimant took his 1967 vacation, October 30 through November 10, 1967, both dates inclusive, returning to service Monday, November 13, 1967. Claimant's birthday was Monday, November 6, 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, November 6th.

Claim was filed with proper officer of the carrier under date of December 18, 1967, contending that claimant was entitled to eight (8) hours' birthday-holiday compensation for his birthday, November 6, 1967, 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.

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.

Claimant's birthday was November 6, 1967, which, also, was one of his vacation days. He was paid for 8 hours vacation pay at pro rata rate. The claim is that in addition he is contractually entitled to 8 hours birthday-holiday pay at pro rata rate. Article II - Holidays of the National Agreement of November 21, 1964, is cited as supporting the claim.

Claims arising on this property involving the identical issue were resolved on a case-by-case basis as follows:

Award No.	Referee	Award
5917	Zumas	Denied
5414	Ritter	Denied
5311	Johnson	Denied
5372	Knox	Sustained
5757	Coffey	Sustained
5764	Dorsey	Sustained
5822	McGovern	Sustained
5823	McGovern	Sustained

This kind of a history of conflicting awards does not settle a dispute on the property. It does, indeed, create disputes. Neither party can be expected, reasonably, to honor the awards in which it has not prevailed and, therefore, the only recourse is by petition to this Board which results in issuance of an award which adds to the existing conflict in the prior awards. For certain, such a state of affairs does not satisfy the intent of the Congress—expressed in Section 2 (4) and (5) of the Railway Labor Act—to “provide for the prompt and orderly settlement of all disputes.” In our Award No. 5981, issued this date, on a property not recipient of prior awards relative to this issue, we review the causes of the antithesis and seek to enunciate principles the application of which may ameliorate the issuance of conflicting awards in disputes presenting identical issues in fact and in law.

In the instant case we find ourselves sailing in a sea of conflict between rocks and shoals. Inasmuch as out of the eight Awards listed, supra, the last five have sustained the claim, it is our opinion that the objectives of the Act will best be served by sustaining the claim.

AWARD

Claim sustained.

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.