

Award No. 5985
Docket No. 5731
2-N&W-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. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Norfolk & Western Railway Co. violated Article 2, Section 6, Paragraph (A), of November 21, 1964 Agreement.

2. That accordingly the Norfolk & Western Railway Co. compensate Carman J. Brewer (8) hours at pro rata rate for his birthday while on vacation, which was denied.

EMPLOYEES' STATEMENT OF FACTS: Carman J. Brewer, hereinafter referred to as the claimant, was regularly employed by the Norfolk & Western Railway Co. hereinafter referred to as carrier, at Madison, Illinois, Repair Track, with work week Monday through Friday, rest days Saturday and Sunday.

During the claimant's vacation, his birthday fell on Thursday, May 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 Thursday, May 25th.

Claim was filed with the proper officer of the carrier under date of June 16, 1967 contending that claimant was entitled to eight (8) hours' birthday holiday compensation for his birthday May 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 claim, all of whom declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant eight (8) hours' birthday holiday compensation for his birthday May 25th, 1967, in addition to vacation pay allowed for the day.

the vacation period is paid for as a vacation day, but not again as a holiday. That provision accompanied the 1954 Agreement's liberalization of regular vacation provisions."

Also, see Third Division Awards 9640 and 9641, and Second Division Awards 2277, 2302, 3477, 3557, 5230, 5231, 5233, 5310, 5311, 5454 through 5459 and 5468 through 5479.

It is evident from the foregoing facts that: (1) Section 6(a), Article II of the November 21, 1964 Agreement does not provide for payment for holidays which fall within a vacation period. (2) The quoted portion of Section 6(a) stating " * * * he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any," is not applicable as the birthday did not occur on other than a work day of the work week of the individual, and (3) claimant would not have been entitled to any other pay for that day under any other rule, agreement or practice on this property; therefore, the claim is without merit and should be denied by the Board.

Carrier would particularly like to call to the Board's attention Second Division Awards 5454 and 5468. These were identical claims to the one here being considered and in all cases the claims were denied. Carrier will not burden the record by quoting these awards, but a careful reading will reveal that the position is fully denied.

Your attention is also directed to Second Division Awards 5555, 5557, 5559, 5560, 5561, 5562, 5569, 5570 and 5571, which involve similar claims on this property that were denied by your Board.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was regularly assigned as Carman in Carrier's Shops, Madison, Illinois. May 26, 1967 was his birthday. Also, it was one of his vacation days. He was paid 8 hours at pro rata rate for the day. Citing Article II — Holidays of the National Agreement of November 21, 1964, it is claimed that Claimant was contractually entitled to 8 hours' pro rata pay for a vacation day plus 8 hours' pro rata pay for his birthday holiday.

In claims arising on this property we were confronted with the same issue in Awards No. 5905, 5873, 5715, 5713, 5712, 5711, 5710, 5571, 5570, 5569, 5562, 5561, 5560, 5559, 5557, 5555, 5468, 5552, 5476 and 5454. Each of the claims was denied. Applying the principle of *stare decisis* to the issue as resolved on this particular property, 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.