Award No. 6090
Docket No. 5900
2-MP-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern 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 R. E. Davidson, Little Rock, Arkansas, the right to work his regular assignment on October 18, 1968.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Davidson in the amount of eight (8) hours at the punitive rate for October 18, 1968.

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 jursidiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant is assigned by bulletin to vacation relief Job #VR-3, work week Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A.M. to 3:30 P. M.

On October 18, 1968 claimant was filling vacation vacancy of Car Inspector Harrison who is assigned to Train Yard Job #2. Claimant's birthday occurred on October 18, 1968, and he was instructed by bulletin that his job would not work on this date because it was his birthday holiday. Nevertheless, Carrier found it necessary to fill this position on October 18th by moving Carman Waddle from his regularly assigned job to fill the Claimant's job.

The Organization relies on Article II, Section 6(g) of the Agreement of November 21, 1964 and the Note to Rule 5 of the basic Agreement as well as awards 5236 (Johnson), 5523 (Coburn), 5975 (Golden) and 5976 (Gilden).

The identical issue and the same parties were presented to us in Award No. 6087 together with other companion cases. We uphold the contentions of the Organization in that award, relying principally on Award 5236 (Johnson) among others. We re-affirm our reasoning in that case and will sustain the award.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.

CARRIER MEMBER'S DISSENT
to
AWARDS 6087, 6088, 6089 AND 6090

The Carrier refused to allow the claims in Awards 6087, 6088, 6089 and 6090 although fully aware of sustaining Awards 5236, 5523, 5975 and 5976. The Carrier requested a reconsideration of the issues in dispute on the premise that the earlier awards are based on allegations of facts advanced by the employes which are false.

The Birthday Holiday Rule became effective January 1, 1965, and the first birthday holiday claims were filed in January of that same year when the Carrier from the start gave shop craft employes their birthday holiday off with pay. The employes cited Section (g) of Article II of the Agreement of November 21, 1964 to the effect that existing rules and practices governing whether an employe works on a holiday shall apply on his birthday. The rule giving the employes the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day) had been in effect long before the adoption of a 40-hour week on September 1, 1949. The note to Rule 5, upon which the employes rely, became effective September 1, 1949. The whole argument in all of the birthday holiday claims, beginning with the first claim filed in January 1965, was based on allegations as to the "existing rules and practices . . . governing whether an employe works on a holiday . . . " during the sixteen years from September 1, 1949, when the Note to Rule 5 became effective, to January 1, 1965, when the Birthday Holiday Rule became effective.

In the earlier dockets, the Carrier did not anticipate that a dispute would arise as to the existing practices governing whether an employe worked on the seven recognized holidays during the 16-year period from September 1, 1949 to January 1, 1965, and merely made the statement, which the Carrier felt should have been sufficient, that work on holidays was distributed on the

basis of an overtime board. The employes, on the other hand, made the allegation that during this 16-year period that if a man's job worked, the man worked. These allegations of fact are in direct conflict one with another. Neither party introduced any proof to support their allegations of fact. The referees in the earlier awards chose to believe the employes' allegations of facts and reached sustaining awards.

In the dockets to which this dissent applies the Carrier had an opportunity to submit proof of its allegation of facts that holiday work on this Carrier is distributed from an overtime board, usually a rotating overtime board, although in one case from a seniority overtime board. The Carrier's Exhibits to its Submissions and Rebuttals in the four dockets to which this dissent applies contained proof of the Carrier's allegation of facts. The Carrier representative in the oral hearing before the referee specifically requested reconsideration of the issues for the reason that the earlier awards were based on the employes' allegation of facts, which were false, and that the Carrier in these dockets has offered proof as to the existing practices governing whether an employee worked on the seven recognized holidays and that the Carrier was entitled to a reconsideration of the issues where it is proven that earlier awards are based on incorrect facts.

Upon examination of the four awards to which we dissent, we find they make no reference whatsoever to the Carrier's argument upon which the request for reconsideration was based. The basis for reconsideration is the practice governing whether an employe worked on any of the seven recognized holidays. The awards are devoid of any finding as to the "existing rules and practices thereunder governing whether an employe works on a holiday," that is, the seven holidays which have been recognized for many years and which is the only matter in dispute in these dockets. The referee chose to ignore the Carrier's sole argument in these dockets apparently for the reason he was not able to refute the proof offered by the Carrier in support of its allegation of fact but was unwilling to overturn the previous awards based on false allegations of facts. Awards which ignore the principal contention of either party have not precedent value and these awards fall in that category.

W. B. Jones

H. F. M. Braidwood

P. C. Carter

R. E. Black

E. T. Horsley

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