

Award No. 6199

Docket No. 6005

2-MP-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the Agreement of February 4, 1965, when they deprived Electrician K. F. Johnson of the right to work his regular assignment on Thursday, February 27, 1969, his birthday holiday.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Johnson in the amount of eight (8) hours at the punitive rate for Thursday, February 27, 1969.

EMPLOYES' STATEMENT OF FACTS: Electrician K. F. Johnson, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a Federal Inspector at Kansas City, Missouri, hours 8:00 A.M. to 4:00 P.M., work week Monday through Friday, rest days Saturday and Sunday, as is evidenced by bulletins identifying the Federal Inspector's position referred to above and awarding said position to the claimant.

The claimant's birthday occurred on Thursday, February 27, 1969, one of his regular work days. The claimant was advised by his foreman, Mechanical Foreman Bishop, that he would not be allowed to work on this date account it being his Birthday Holiday. However, the Carrier found it necessary to fill his position on date of (February 27, 1969), and moved Electrician Dryden off his regularly assigned job to fill claimant's position as Federal Inspector. Therefore, when the Carrier failed to comply with the rule and past practice, i.e., filling the job the same as other holidays and working the incumbent, they violated the agreement.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

The agreement of June 1, 1960, as amended, and the Agreement of February 4, 1965 are controlling.

Ditty. Although Electrician Ditty performed other work on the holiday in addition to making federal inspections, it can be said that Electrician Ditty filled Claimant's position on the two holidays to the extent that he made federal inspections. No claim was filed because Electrician Ditty filled Claimant's position on the two holidays.

We shall now apply the foregoing principles to the birthday holiday and specifically to Claimant's birthday holiday.

We have seen that the local committee furnishes the names of the men to be assigned on the holiday, the only restriction being that the "men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred." On claimant's birthday holiday, all of the other electricians assigned to work on the first shift who had February 27, 1969, as a work day of their assignment were assigned to the first shift and had the day on which claimant's birthday holiday fell as a day of their assignment. No employee was called in from the second shift or third shift or on his rest day to work on the date of claim. The reduced force simply worked shorthanded that day.

We have also seen that the men assigned to work on holidays perform all of the work required on the holiday including duties which are normally performed by other electricians. This includes the making of federal inspections. This same principle was followed on claimant's birthday, when an electrician assigned to the same shift and who had the day on which claimant's birthday holiday fell as a day of his assignment made the necessary federal inspections while claimant was off on his birthday holiday.

We believe the foregoing discussion along with the exhibits in support thereof prove beyond doubt that the Carrier complied with the birthday holiday rule and the existing rules governing whether an employee works on a holiday, that is, the Note to Rule 5, on claimant's birthday in the same manner as such rules and practices are followed on the seven recognized holidays. Each of the electricians assigned at Kansas City as well as the electricians at other points on the System has a birthday once a year. In each case the electrician is permitted to have the day off with pay and the employees assigned to work that day perform all of the work required including the work which might be performed by the electrician absent on his birthday. No claim has been filed for any electrician except the claimant. The employees apparently wish to distinguish claimant's situation from that of other electricians on the basis that he has a preferred assignment, that is, federal inspector which pays a 6 cent differential. The distinction is not valid. The electricians assigned to work can be said to fill the position of each electrician who is absent on his birthday holiday and no claim has been filed in such cases. We have proven beyond doubt that, even though claimant is regularly assigned as federal inspector, he does not work on the seven recognized holidays unless he is among those on the rotating overtime board named by the local committee to work on the holiday. Just as claimant has no right to work on the seven recognized holidays, he has no right to work on his birthday holiday under the existing rules and practices governing whether an employee works on a holiday.

For the reasons stated, the claim is not supported by the rules relied on and should 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 were given due notice of hearing thereon.

It is firmly established by the case law of this Board that the primary objective of the Birthday-Holiday Agreement is to afford an employe covered by its terms the enjoyment of a day off on his birthday without diminution of wages; however, if work exclusively performed by the employe's position remains and is required to be performed on such holiday the right of the work is vested in the regularly assigned employe with penalty compensation as contractually prescribed in Article II 6 (a) and (g) of the Birthday-Holiday Agreement of November 21, 1964.

A careful review of the record indicates that the Carrier did not use the Claimant to fill his position on his Birthday holiday when he was the only one off on the holiday from his shift. Under the provisions of the Note to Rule 5 of the current agreement we read:

NOTE TO RULE 5 OF THE CURRENT AGREEMENT.

NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employes to complete the requirements the junior men on each shift will be assigned beginning with the junior man."

Thus after providing that if an employe's birthday falls on a work day of his work week he shall be given the day off with pay the Agreement of November 21, 1964 proceeds to state that whether he is to work on his birthday holiday shall be governed by existing rules and practices governing whether he is to work on other holidays; and on this property the practice under the rules is that if the job is worked, it will be by an employe who would have worked "if the holiday had not occurred", which under this record, would have been the Claimant.

Consequently, we will sustain 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 11th day of November, 1971.

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