Award No. 6254
Docket No. 6124
2-MP-MA-'72

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, AFL-CIO (Machinists)

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 Machinist A. E. Lock the right to work his regular assignment on Monday, March 2, 1970.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist A. E. Lock in the amount of eight (8) hours at the punitive rate for Monday, March 2, 1970.

EMPLOYES' STATEMENT OF FACTS: Machinist A. E. Lock, hereinafter referred to as the Claimant, is employed by the Missouri Railroad Company, hereinafter referred to as the carrier, as the truck gang welder, Little Rock, Arkansas, work week Monday through Friday, rest days Saturday and Sunday, hours 7:00 A. M. to 3:00 P. M.

The claimant's birthday occurred on Monday, March 2, 1970, one of his regular work days. The claimant was advised that his job would be blanked on this date (Monday, March 2, 1970) account it being his birthday holiday and he was to take the day off, however, the carrier found it necessary to fill this position on this date (Monday, March 2, 1970) but failed to comply with the rule and past practice, i.e., filling the job the same as other holidays and working the incumbent, which constitutes the basis of the claim. The claimant's job was worked by Machinist G. B. Gifford, who is assigned by bulletin in the truck gang and Machinist G. B. Gifford performed all the duties of the welding trucks (claimant) and was paid for that day the different rate in pay between machinists and welders rate, therefore the carrier did not work this holiday in line with the rules and practices of working other holidays.

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

and 5844 which denied claims on behalf of employes off on their birthday holiday similar to the instant claim. In each of the dockets covered by the above awards, the claimant was given his birthday holiday off with pay and no employe was called in to work in his place. Your Board, in each case, denied a claim for eight hours at the time and one-half rate. The situation and claim in this docket is identical. In each of the four dockets, your Board denied the claim.

The Birthday Holiday Rule became effective January 1, 1965. All machinists on this property have been given their birthday holiday off with pay in the same manner as claimant since February 15, 1965 (see Letter of Understanding dated February 4, 1965 attached to the National Mediation Agreement giving employes who had birthdays between January 1, 1965 and February 15, 1965 an additional day's pay. This was necessitated since the Mediation Agreement was not signed until February 4, 1965, subsequent to the effective date of the Birthday Holiday Rule). The instant claim on behalf of Machinist Lock for additional pay on his birthday on March 2, 1970 is the first claim filed on behalf of a machinist. This means that the rule had been in effect for five years and all machinists given their birthday holiday off with pay in the same manner as claimant and no claim filed until the instant claim. This practice and acceptance of the practice for the five years since the Birthday Holiday Rule became effective is additional proof that there is no basis for the claim and that the claim should be denied in line with Awards 5424, 5534, 5636 and 5844.

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 performed work for Carrier Monday through Friday, rest days Saturday and Sunday, hours 7:00 A.M. to 3:00 P.M. Claimant's birthday occurred on Monday, March 2, 1970, one of his regular work days.

The organization contends that Carrier advised claimant that his job would be blanked on that date, because it was his birthday holiday and that he accordingly was to take the day off. They further allege that claimant's job was worked by Machinist Gifford, who was assigned by bulletin to the truck gang and that Machinist Gifford performed all the duties of claimant's job and was paid the differential between Machinists and Welders' rate. They rely on Article II Section 6 (g) of the Agreement of February 4, 1965, which reads:

> "(G) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday."

And the Note to Rule 5, which in pertinent part reads as follows:

"NOTE: * * * Men will be assigned from the men on each shift who would have worked the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. * * *."

It is not their contention that the Carrier had to work the claimant's job on his holiday but since they did, the rule provides that the man will work who would have worked had the holiday not occurred — in this case, the claimant. The Board agrees.

The evidence of record indicates that Machinist Gifford did in fact work claimant's job on his birthday holiday. This was apparently the only day that Machinist Gifford was assigned to work this job and was properly compensated by Carrier in recognition of performing work in the higher classification.

The arguments of the Carrier to the effect that the work was merely done by employes on duty at the time, that is performed by the regular work force are not persuasive. The same issue was presented in Award 5955. We agree with the reasoning in that Award and will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1972.

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