

Award No. 6287

Docket No. 6130

2-MP-CM-'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 EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Carman A. J. Collins, Coffeyville, Kansas, the right to work his regular assignment on Wednesday, March 18, 1970.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Collins in the amount of eight (8) hours at the punitive rate for March 18, 1970, and in addition to the money amount claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

EMPLOYEES' STATEMENT OF FACTS: Carman A. J. Collins, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, at Coffeyville, Kansas, and is assigned by bulletin as wash track leadman, work week Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A.M. to 4:00 P.M.

The Claimant's birthday occurred on Wednesday, March 18, 1970, and he was instructed by Car Foreman B. R. Tatum not to report for work on this date account it being his birthday holiday. However, the Carrier found it necessary to fill this position on this date (March 18, 1970) and Carman-Millman H. G. Repogle who is regularly assigned by bulletin to the repair track, work week Monday through Friday, rest days Saturday and Sunday, was moved from his regularly assigned position to fill the Claimant's job on this date and to substantiate this fact the Employees wish to quote Local Chairman, Mr. M. C. George's letter of April 10, 1970, addressed to Master Mechanic, Mr. H. R. Burge, which is herewith attached as Employees' Exhibit "A":

formed by Claimant. This follows the practice on the seven recognized holidays where a reduced force is worked and the men assigned to work on the holiday perform all of the work which is normally performed by employes off on the holiday.

Similar claims were denied by your Board in Awards 5424, 5534, 5539 and 5639. The Organization in those Awards failed to prove that an employe had a right of work his own assignment on the seven recognized holidays and the same is true here. As previously stated, men are selected to work on the seven recognized holidays from a rotating overtime board and not by reason of their regular assignment. (See Award 5948 for an exception where employes were selected for holiday work on the basis of a seniority overtime board).

Claimant does not have a right under the Note to Rule 5 to work his own assignment on the seven recognized holidays and does not have such a right on his birthday holiday. The force was handled in the same manner on Claimant's birthday holiday as the force is handled on the seven recognized holidays where a reduced force is worked. It follows that there is no basis for the claim for eight hours at the time and one-half rate and that claim should be denied. In addition, there is no basis for the claim for interest, in any event, since there is no provision in the Collective Bargaining Agreement for such payment.

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 is assigned by bulletin as wash track leadman with a work week of Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A.M. to 4:00 P.M. His birthday fell on Wednesday, March 18, 1970 and he was instructed by his Supervisor not to report for work on that day because it was his birthday holiday. His position was not blanked on that day, but was filled by Carman-Millman H. G. Replogle, who is regularly assigned by bulletin to the repair track, work week Monday through Friday, rest days Saturday and Sunday.

The Organization claims a violation of Article II, Section 6(g) of the Agreement of November 21, 1964, 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 reads:

“Note. Notice will be posted five (5) days preceding a holiday listing the name of the 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 the 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."

It is not the Organization's contention that Carrier was required to work Claimant's job on the birthday 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 Carrier takes cognizance of the numerous awards emanating from this Board sustaining the Claimant's position, but specifically requests us to reconsider the issue involved. They state *arguendo* that it has been the practice on this property for twenty years for one employe to perform the work of another on the seven recognized holidays, ergo the same practice should be permitted on the birthday holiday.

The position taken by the Carrier in this case is not supported by evidence of record. It amounts to an assertion without substantiation. To be sure if substantial evidence were before us showing beyond question a continued practice for twenty years, we would agree with Carrier, but such is not the case.

Claimant, under the rules quoted *infra*, should have been afforded the opportunity to work on the day in question.

We will sustain the claim for eight hours at the punitive rate for March 18, 1970 but will deny the claim for interest since there is no support for this portion of the claim in the basic collective bargaining Agreement.

AWARD

Claim sustained in accordance with findings as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1972.