



Award No. 16131
Docket No. MW-16585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to properly compensate Welder John Taluskas while on vacation the same amount he would have received had he worked during that period (June 7 through July 2, 1965).

(2) The Carrier further violated the Agreement and the Railway Labor Act when it summarily refused our request to discuss this claim in conference.

(3) Welder John Taluskas now be paid \$35.60 (8 hours at time and one-half rate on 6/17/65) because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was the occupant of a welder's position. He was regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were designated rest days. During the period from June 7 through July 2, 1965, the claimant was scheduled for and did receive his annual vacation. Thursday, June 17, 1965, was the claimant's birthday.

On June 17, 1965, Mr. Amador E. Manzo was assigned to perform eight hours of relief work on the claimant's position. If the claimant had not been on vacation he would have performed this work. Since June 17, 1965 was his birthday, the claimant would have received eight hours' pay at his time and one-half rate (\$35.60) in addition to eight hours' pay at his pro rata rate as birthday pay. The Carrier allowed the claimant only eight hours' pay at his pro rata rate of \$2.9668 per hour as vacation pay for June 17, 1965.

Conferee was requested with the Carrier's highest appellate officer in a letter reading:

of the period for which the employe is entitled to vacation. He would not receive another day off or pay in lieu thereof.

Also, the position in question is not scheduled to work on a Holiday which falls on a work day of his assignment and as such it is not necessary to include a day at penalty rate in his vacation compensation in addition to the pro rata day covering vacation pay, if his position is worked on his birthday, which falls on a work day during his vacation period.

For these reasons, I must deny your claim."

Under date of January 11, 1966, the General Chairman addressed the following letter to Carrier's Engineer Maintenance of Way:

"Receipt is acknowledged of your letter of November 22, 1965 wherein you denied our appeal from Mr. Barhydt's decision on the claim of Welder John Taluskas for additional pay because his birthday fell within his vacation period.

Inasmuch as I would like to discuss this dispute with you, will you kindly advise the time, date and place I can meet with you for that purpose. Please be advised within the Railway Labor Act that such conference must be held 'upon the line of the Carrier involved,' which, in this case, would be on the line of the Indiana Harbor Belt Railroad Company."

In view of the reasons stated for denial of the claim in his letter to the General Chairman dated November 22, 1965, the Engineer-Maintenance of Way replied to the General Chairman on January 24, 1966, as follows:

"Yours of January 11th, relative to alleged claim of Welder, John Taluskas for additional pay because his birthday fell within his vacation period.

In my letter of November 22nd, in which I denied your claim, it clearly states that this employe is not entitled to another day off or pay in lieu thereof. This is the way the agreement reads and there is no reason for me to change my mind.

For this reason a discussion on this subject would not serve any useful purpose."

OPINION OF BOARD: Claimant's position was filled on his birthday while he was on vacation; involved in this Claim is the question of payment to Claimant on that account. The same issue was involved in our Awards 15722 (Miller) and 15910 (McGovern). We see no reason to depart from those awards. Therefore, we will sustain Items (1) and (3) of the Claim. In light of our decision on these substantive portions of the Claim, we do not find it necessary to deal with the procedural issue raised in Item (2) of the Claim, and will dismiss that Item.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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; and

That Carrier violated the Agreement.

AWARD

Item (1) sustained; Item (3) sustained in the amount of \$35.60; and Item (2) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1968.