Award Number 17925
Docket Number TE-17721
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
PENN CENTRAL COMPANY, NEW YORK AND NORTH-EASTERN REGIONS
(except Boston & Albany Division).

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York Central Railroad, that:

1. Carrier violated Agreement when it refused to allow Telegrapher-Leverman J. Yapchanyk, after giving reasonable notice to his supervisor, to have the following day, January 3, 1967, considered as his birthday when his birthday fell on January 2, 1967, a legal holiday.

2. Carrier shall compensate J. Yapchanyk an additional four (4) hours pay at the pro rata rate for work performed January 3, 1967.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute arose when the Carrier refused to allow the Claimant, Telegrapher-Leverman J. Yapchanyk to have his birthday celebrated on the day following the day on which it fell. Claimant Yapchanyk's birthday fell on January 2, 1967, which was also a legal holiday of New Year's and was the assigned rest day of his work week. Claimant Yapchanyk made proper reasonable notice to the Carrier that he wanted to have the following day, January 3, considered as his birthday and the Carrier refused to grant this. Claimant Yapchanyk was paid eight hours' pro rata for his birthday holiday but the Carrier paid him eight hours' pro rata for the work on January 3, 1967, which was the day he requested to be considered as his birthday for the purposes of the Agreement. The claim, therefore, is for the additional four hours' pay for January 3, 1967.

(b) ISSUES

Did the Carrier violate Article 2, Section 6(f) of the November 20, 1964 Agreement when it failed to allow Claimant Yapchanyk to consider January 3, 1967 as his birthday after he had given reasonable notice to his supervisor?

Is Claimant Yapchanyk entitled to the difference between the eight hours at time and one-half which is the proper rate of pay for work on a holiday, January 3, 1967, and the eight hours pro rata which he was paid?

CARRIER'S STATEMENT OF FACTS: There is on file with your Board an Agreement effective July 1, 1948, with amendments to January 1, 1953, including an Agreement and Memorandum of Agreement signed at Washington, D. C., on December 10, 1962, between the Order of Railroad Telegraphers (now Transportation-Communication Employes Union) and the New York Central Railroad Company (New York and EAstern Districts, except Boston & Albany Division) (now Penn Central Company (New York and Northeastern Regions, except Boston & Albany Division), which is hereby made part of this submission.

Mr. Yapchanyk was regularly assigned to 7:15 A.M. telegrapher-leverman position at Tarrytown, New York, with Sunday and Monday rest days.

Mr. Yapchanyk's birthday holiday was Monday, January 2, 1967. Prior to January 2, 1967, Mr. Yapchanyk requested the agent at Tarrytown to advance his birthday holiday from Monday, January 2, 1967, a rest day of his assignment, to Tuesday, January 3, 1967, a work day of his assignment.

The Agent at Tarrytown denied Mr. Yapchanyk's request on the basis that he did not have the option of selecting another day off under provisions of Article II, Section 6(f), of the National Agreement dated November 20, 1964, because his birthday, Monday, January 2, 1967, fell on one of his rest days.

Mr. Yapchanyk claimed 8 hours at time and one-half rate which he would have received had he been permitted to change his birthday to Tuesday, January 3, 1967, a work day of his work week. Carrier denied the claim as presented and paid claimant 8 hours at pro rata rate of the position to which he was assigned under paragraph (a) of Article II, Section 6, of the November 20, 1964 Agreement.

When the claim was not settled on the property the Organization submitted it to the Third Division for final adjudication.

Pertinent correspondence concerning this claim is considered a basic part of Carrier's submission, attached as Carrier's Exhibits "A" through "F".

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts are clear and not in dispute. Claimant occupied a regular assignment having Sunday and Monday as regular assigned rest days. January 1, 1967, one of the general holidays, occurred on Sunday and was observed on Monday, January 2, 1967, in accordance with Article 11, Section 2, of the parties' general agreement. Claimant's birthday was also January 2. Prior thereto, Claimant gave notice to his supervisor to have the following day, January 3, 1967, considered as his birthday for the purposes of the Agreement. Carrier declined his request and required him to work on January 3, paying him at the pro rata rate. Carrier's reason for declining claimant's request was its contention that the option to select another day is not applicable when the coincidental holiday and birthday occurs on a rest day of an employe's assignment.

Employes disagreed with Carrier's contention, arguing that the rule conferring the right to exercise the option makes no distinction between rest days and work days. The Employes rely on the specific language of the last sentence in Section 6(f), Article 11, Agreement of November 20, 1964. This Section reads:

"(f) An employee working at a location away from his residence may, by giving reasonable notice to his supervisor, have the day immediately preceding the first day during which he is not scheduled to work following his birthday considered as his birthday for the purpose of this Section. An employee whose birthday falls on February 29, may, on other than leap years, by giving reasonable notice to his supervisor, have February 28 or the day immediately preceding the first day during which he is not scheduled to work following February 28 considered as his birthday for the purposes of this Section. If an employee's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purposes of this Section."

Mindful that effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible, our disposition of this claim is dictated by well settled rules of construction of contracts that each provision is to be given effect.

It is decided that the Claimant did properly exercise his option and that the Carrier erred in declining Claimant's request and that January 3 must be considered the claimant's birthday in 1967, requiring the time and one-half rate for work performed that day, rather than pro rata which was paid. Thus, the claim for an additional four (4) hours pay at the pro rata rate for work performed on January 3, 1967 is sustained.

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.

CARRIER MEMBERS' DISSENT TO AWARD 17925 DOCKET TE-17721

The Referee, after acknowledging that he is mindful that effect should be given to the entire language of the agreement, promptly proceeds to disregard such principle and decides the dispute on but one sentence of the agreement.

Furthermore, the award completely ignores the fact that the Carriers and two of the Organizations signatory to the agreement had issued interpretations to their constituents as to the intent of the agreement and which interpretations were contrary to the interpretation placed upon the agreement by the Referee in this award. In the discussion of this dispute the Labor Member cited Award 9754 where similar interpretations had been considered to sustain the claim of the Petitioner. Here the Referee ignores similar data submitted on behalf of the Carriers in order to sustain the claim of Petitioner. In his Memorandum for the Referee the Labor Member stated as follows with respect to interpretations such as here in question:

> "The pronouncements of such associations, however, are not official and have no value in arriving at interpretations of agreement unless supported in some accepted manner, **or where they agree with their opponent's views.**" (Emphasis supplied)

In this dispute the interpretations issued by the opponents were in harmony and should have been accepted as being dispositive of the intent of the agreement. However, in his haste to sustain the claim the Referee completely ignored the pronouncements of the parties and proceeded to rule directly contrary to the harmonious views of the opponents.

Awards of this ilk do nothing whatever to settle disputes. To the contrary they merely serve to generate additional disputes. The award is in palpable error and of no precedential value.

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ P. C. CARTER
P. C. Carter

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor

REPLY TO CARRIER MEMBERS' DISSENT TO AWARD 17925, DOCKET TE 17721

The Carrier Members' Dissent is obviously self-contradictory and valueless. If the opponents had held harmonious views of the intent of the agreement in issue, there would have been no dispute in the first place.

/s/ C. E. KIEF
C. E. Kief, Labor Member

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