

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

---

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (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 C. R. Brooks, Memphis, Tennessee, the right to work his regular assignment on December 30, 1968.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Brooks in the amount of eight (8) hours at the punitive rate for December 30, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** Carman C. R. Brooks, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Memphis, Tennessee. Claimant is assigned by bulletin to job of truck driver and his birthday occurred on December 30, 1968, and he was instructed by bulletin that his job would not work on this date account it being his birthday holiday. However, the carrier found it necessary to fill this position on this date (December 30, 1968) and Carman Jack West who is assigned to job of emergency truck driver was moved from his regularly assigned job to fill the claimant's job on this date. When the carrier failed to comply with the rules and practice, i.e., filling the job the same as other holidays and working the incumbent, the agreement was violated.

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 November 21, 1964, are controlling.

**POSITION OF EMPLOYEES:** Article II, Section 6(g) of the Agreement of November 21, 1964, 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 clearly states that birthday holiday will be worked the same as any other holiday.

Note to Rule 5, reads:

“NOTE: Notice will be posted five (5) days preceding a holiday listing the names 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 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.”

and sets out the procedure for the carrier to request that the local committee furnish the name of the man to work the holiday. It is not the employes' contention that the carrier had to work the claimant's job on his 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 local committee would be obligated under the rule to select that man unless for some reason he did not want to work or was not available. It is the position of the employes that the rule and practice regarding working birthday holiday is the same as other holidays and is controlling. If the job is worked, as in the instant case, it is to be worked in line with other holidays governed by rules and practice.

A case similar to this was progressed to your Honorable Board which resulted in Award 5523, and in the Findings of that award your Honorable Board said:

“ \* \* \* \* \*

The dispute is not one of first impression. On July 21, 1967, this Board rendered Second Division Award No. 5236 (Referee Johnson) sustaining a claim involving these same parties and agreement rules, the identical issue and a similar set of facts. There we made the following findings pertinent here:

‘However, as noted above, Article II, Section 6(g) of the agreement of November 21, 1964, provides that with relation to the question whether an employe works on his birthday holiday, the practices and circumstances which determine that matter for the seven recognized holidays shall apply. That provision like all others in the agreement of November 21, 1964, must be observed.

The Note to Rule 5 clearly provides that when positions have to be filled on holidays they shall be filled from among

those who would have worked if the holiday had not occurred. It further provides that men so assigned "will protect the work."

A birthday holiday differs from others in that it relates only to an employe whose birthday anniversary it happens to be. However, under the provisions of the Note to Rule 5 of the current agreement, and Article II, Section 6(g) of the Agreement of November 21, 1964, he must work on that holiday and protect the work if his position is worked that day.'

The findings and conclusions made by the Board in Award No. 5236 are held to be controlling. Accordingly, this claim will be sustained.

\* \* \* \* \*

The carrier violated Article II, Section 6(g) of the Agreement of November 21, 1964, and Note to Rule 5 of the controlling agreement when they did not comply with the rules or practice, thereby depriving the claimant of his right to work his assignment on his birthday holiday, the same as any other holiday, and the employes ask your Honorable Board to so find in favor of the claimant.

Finally, the reasons hereinbefore set forth abundantly support the sustaining of this Statement of Dispute and the Honorable Members of your Division are respectfully requested to do so.

#### **CARRIER'S STATEMENT OF FACTS:**

1. There is an agreement between the parties hereto effective June 1, 1960, which is on file with your Board and which is made a part hereof by reference. Since printing the basic agreement, the negotiating committees for the carriers and the employes entered into an agreement dated November 21, 1964, providing for an additional holiday, the employe's birthday, making eight paid holidays in all. Copies of the agreement of November 21, 1964, are on file with your Board.

2. This is a claim on behalf of Carman C. R. Brooks at Memphis for eight (8) hours at the time and one-half rate in addition to the eight hours at the straight time rate allowed as birthday holiday pay for December 30, 1968, his birthday holiday. The claim is based on the contention that claimant should have been required to work on his birthday holiday rather than giving him the day off with pay.

3. Claimant is a part of the repair track force. His duties include emergency road work, wrecking and other carman duties on line of road. These duties are in addition to his regularly assigned duties on the repair track where he works when not needed for road work.

4. On the seven recognized holidays, the entire repair track is closed down, including claimant's position. The minimum number of car inspectors needed in the train yard are required to work on holidays but no employes on the repair track work on holidays.

5. The claim is based on the fact that a carman who was assigned to work on the repair track on the date of claim performed emergency road service on that day. The employes allege for that reason that claimant's position was filled on his birthday holiday and that claimant should have been required to work the job if it was filled on the birthday holiday. The position of the employes is stated in the general chairman's letter of March 11, 1969. The carrier's position is stated in the Mechanical Superintendent's letter of March 28, 1969. The claim was thereafter appealed to the director of labor relations but no basis could be found for the claim and the earlier decision declining the claim was affirmed.

**POSITION OF CARRIER:** It is the position of the carrier that claimant was given his birthday holiday off with pay in accordance with the birthday holiday rule and that neither the schedule agreement nor the practice required the carrier to use claimant on his birthday holiday. It follows that the claim for an additional eight hours at the time and one-half rate should be declined.

Without waiving the foregoing, it is also the position of the carrier that the claim is one for the punitive rate for work not performed and that the monetary claim in any event can be for no more than the straight time rate.

At Memphis, Tennessee, there are approximately 24 carmen assigned to the repair track and 13 car inspectors assigned to the train yard. The repair track facility at Memphis is a spot repair track and the men are assigned on a three-shift basis with staggered rest days so that carmen are assigned seven days a week. On the seven recognized holidays, the entire repair track force is shut down and no cars are repaired on holidays. This includes the position held by the claimant in this dispute whose duties include emergency road work. If carmen are needed on a holiday to repair a car such as a loaded car which cannot be delayed, men are called on an overtime basis from the overtime board to perform the work required.

The employes recognize that the carrier is not required to work carmen on the repair track on the seven recognized holidays, and no claim has ever been filed on that basis. The employes, of course, are paid holiday pay. We see then that the practice at Memphis on the seven recognized holidays is to reduce the force so that no carmen work on the repair track on holidays.

Each of the 24 carmen on the repair track has a birthday each year and each of the 24 carmen are allowed their birthday holiday off with pay. The force on the repair track simply works one man short when a carman is absent on his birthday holiday. No claims have been filed for any of the carmen on the repair track at Memphis except the claim in this dispute on behalf of Carman Brooks.

In the case of the other carmen, the employes are simply assigned to the repair track with no particularly identifiable duties. The employes recognize that carmen on a repair track work in a pool and have no identifiable duties which are exclusive to any one employe. When a carman is absent on his birthday holiday for other reasons, the other carmen assigned to work that day simply perform all of the necessary work including whatever tasks the absent carman may have performed.

The employees seek to distinguish the case of Carman Brooks from the other carmen on the basis that the duties of Carman Brooks included emergency road work. A position on the repair track at Memphis is advertised as including emergency road work since any employe assigned to the position must have an appropriate driver's license to operate the truck. The job is also preferred by some employes and the employes are given the opportunity to bid on the position on a seniority basis for that additional reason. To the extent that Carman Brooks goes out on emergency road trips by himself, the duties of his position are performed by him exclusively. This is not true when he is not required for road service and he is used along with the other carmen on the repair track.

In this case the employes allege that Carman Jack West (who incidentally relieves Carman Brooks when Brooks is not available) was used for emergency road service while Carman Brooks was home celebrating his birthday holiday. The employes state that Carman West filled the position of Carman Brooks on the date of claim.

To the extent that Carman West performed emergency road service on date of claim, Carman West performed work which would have been performed by Carman Brooks if the latter had not been off on his birthday holiday. This is a fact, but this fact alone does not support the claim unless a rule or a practice operating on these facts can be shown to support the claim. The employes attempt to support the claim both by citing the Note to Rule 5 and by past practice. In the words of the general chairman in his letter of March 11, "The claimant was the only one who had a holiday and his job did work and past practice is to fill it from the incumbent of the job, as set out in Note to Rule 5. . . ." We shall show that the claim is not supported by either the Note to Rule 5 or past practice.

The Note to Rule 5 is a note following the rule captioned "Relief Work, Rest Days and Holidays" and is a pay rule providing the amount employes are to be paid who are used on rest days and holidays. The rule does not require the carrier to use an employe on a rest day or a holiday. For the convenience of your Board, the rule is set forth here in its entirety:

#### "RULE 5.

(a) Employes assigned to rest day relief positions and/or holiday work, or those called to take the place of such employes, will be allowed to complete the balance of the day unless released at their own request. Those called will be advised as soon as possible after vacancies become known. The foregoing is not intended to conflict with Rules 3 and 4.

(b) A relief employe working in the place of a regular employe on the latter's assigned rest day will be paid therefor at the straight time rate, except such relief employe if worked on a designated holiday shall be compensated therefor under the provisions of Rule 3 and Rule 138(a).

(c) Where rest days are being accumulated, under paragraph (g) of Section 2, Rule 1, work on rest days will be paid for at the pro rata rate, however, if work is performed on a designated holiday the

employee will be paid therefor under the provisions of Rule 3 and Rule 138(a).

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."

Although the carrier may blank all positions on holidays, the operating requirements are such that some shop craft employes are needed on holidays. The Note to Rule 5 provides for the method of selecting the employes entitled to work on the holidays. The Note was written at the time the 40-hour week was negotiated in recognition of the fact that employes would be needed on rest days with the new five-day work week arrangement and also would be needed on holidays. Since the 40-hour week became effective all shop craft positions are advertised so as to make it clear that no employe is assigned to work on a holiday. For example, the last position bid in by Carman Brooks was advertised as follows:

**"MISSOURI PACIFIC RAILROAD**

Memphis, March 10, 1967

**POSITION BULLETIN NO. 37**

Bids will be received in this office until 12 Noon, Friday, March 17, 1967, for one (1) Carman-Welder, on heavy repair track, to work as follows, except holidays:

Days of Assignment: Monday through Friday

Hours of Assignment: 7 A. M.-12 Noon, 12:30 P. M.-3:30 P. M.

Rest days: Saturday and Sunday

Job No. 16 — account adjustment of forces.

/s/ H. J. Watkins, GCF

cc: JHW  
HEH  
JRH  
WHB"

Your Board will note that the bulletin states that the carmen welder is to work Monday through Friday "except holidays" thereby making it clear that the employe is not assigned to work on holidays. After bidding in the above position, Carman Brooks was displaced some months later and exercised his seniority on the position which includes emergency road service, the job he held on the date of claim.

Under the Note to Rule 5 employes are selected to work on the holiday as follows: (1) Local Committee is advised by the supervisor of the number of men required on the holiday. (2) Local Committee furnishes the names of the men to be assigned. (3) Notice is posted five days preceding the holiday listing the names of the employes assigned to work on the holiday. (4) The men named by the local committee who are to work on each of the shifts will be men assigned from the men on each shift who would have the day on which the holiday falls as a work day of their assignment if the holiday had not occurred. (5) The men so assigned will protect the work. (6) 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. From the foregoing, it is apparent that carrier advises the local committee of the number of men required (as opposed to specific positions to be filled) and the local committee furnishes the names of the men to be assigned.

At Memphis the entire repair track is shut down so that there is no need to resort to this procedure so far as the repair track force is concerned. A reduced number of car inspectors are used on holidays in the train yard and the procedure is followed in selecting the car inspectors to work on any one holiday. The car inspectors are selected in accordance with the shift to which assigned and from those who would have had the day as a work day of their assignment (as opposed to a rest day) if the holiday had not occurred. The men are selected on a rotating basis so that each shares in the holiday overtime work.

At other points on the Missouri Pacific a reduced force is required frequently on holidays. This is particularly true in the Locomotive Department. The carrier designates the number of machinists, boilermakers and electricians required and the local committee furnishes the names of the men to be assigned from a rotating holiday overtime board.

Applying the Note to Rule 5 to the dispute in this docket, we see that the carrier is not obligated to require Carman Brooks to work on the seven recognized holidays nor is the carrier obligated to require him to work on his birthday holiday. We have seen that the carrier may close down an entire facility on holidays as in the case of the repair track at Memphis. Where the carrier is required to work all or a portion of a force, the procedures in the Note to Rule 5 are followed in the selection of the employes to work on the holiday. In the case of a birthday holiday, the day is a holiday for only one employe and is a regularly assigned work day for all others. In this case, the carrier worked a reduced force at Memphis and did not resort to the procedures in the Note to Rule 5 for the purpose of selecting an employe to work on the holiday.

From the foregoing, we believe it is clear that the Note to Rule 5 does not support the claim. The employes also argue that "past practice is to fill it (any given position) from the incumbent of the job." The carrier emphatically denies this allegation and calls upon the employes to prove this to be a fact if they wish to rely upon the allegation. We have seen above that the local committee is to furnish the names of the men to be assigned on a holiday. Where less than the entire force in a facility is worked on a holiday, the local committee selects the men from a rotating overtime board, not on the basis of selecting the incumbent to fill each position. This arrangement is in effect at Memphis as well as all other points on the Missouri Pacific as evidenced by the letter from the local chairman along with the attachment thereto.

From the foregoing, the carrier states emphatically that it has not been the past practice to fill positions on holidays by the incumbent of a job as alleged by the employes. We have seen that each of the carmen on the repair track at Memphis is permitted to have his birthday off with pay and that a claim has been filed only where a carman can be said to have some duties which are exclusive to his position. Those duties were performed by another carman who was on duty and who had the day as a regular work day of his assignment. The fact that the carman filled the position of Carman Brooks on the latter's birthday holiday does not support the claim unless a rule or a practice operating on these facts support the claim. We have shown that neither the Note to Rule 5 nor the practice supports the claim. Although preferred jobs are advertised to give shop craft employes an opportunity to bid on a seniority basis, all shop craft employes of a given craft or class are qualified to perform the work of their craft and may be required to perform any of the work of the craft. This is true even of work included in a preferred position. The fact that one shop craft employe filled the position of another standing alone lends no support to a monetary claim for the absent shop craft employe.

Carman Brooks, the Claimant herein, was allowed his birthday holiday off with pay in accordance with Article II of the agreement of November 21, 1964. The carrier fully complied with the birthday holiday rule and there is no basis for the monetary claim in this dispute. It follows that the claim 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 waived right of appearance at hearing thereon.

The Board, in the interest of brevity is, with the consent of the parties, combining Dockets 5966, 5958 and 5952 for the reason that while the claimants are different, their grievances are identical. It is further noted that in these three dockets the same Carrier and Organization are involved, and that the same clauses, rules and issues are presented for decision.

All three claimants, (Carman C. R. Brooks in Docket 5966; Carman C. J. Collins in Docket 5958; Carman C. L. Womble in Docket 5952 claim that contrary to Article II, Section 6(g) of the November 21, 1964 Agreement and the Note to Rule No. 5, that on their respective birthday holidays, their respective jobs worked, and that the work each would normally have performed had each been at work, was assigned to and performed by other employes. In each instance the remedy sought is 8 hours' pay at the punitive rate.

The above clauses have been the subject of at least 13 previous awards and both parties refer to them in their ex parte rebuttal briefs.

The Board acknowledges that in the instant cases the thrust of Carrier's position is to seek review by the Board of previous awards construing and



applying Article II 6(g) and Note to Rule 5 in relation to birthday holidays. In fact Carrier's Rebuttal Brief, page 4, states:

"Where an award is based on incorrect facts the Carrier is certainly entitled to show the correct facts and is entitled to reconsideration of the issues on the basis of the correct facts."

With the above general postulate the Board has no disagreement.

Reference is made to Third Division Award No. 10911, which succinctly states the following:

"When the Division has previously considered and disposed of a dispute involving the same parties' same rules and similar facts presenting the same issue as is now before the Division, a prior decision should control. Any other standard would lead to chaos.

. . . in the absence of any showing that (previous) awards are patently erroneous (and no such showing was made) we must follow them."

The above citation notes correctly that chaos would be the consequence absent recognition by the parties and the Board of the impact and role of prior awards.

However, the Board also notes that it can contribute to expeditious and orderly resolution of grievances arising under the Agreements, by making every effort to assure that awards construing and applying Agreement terms to particular fact situations, have a minimum of inconsistency and maximum of consistency. The parties have a right to rely on such a postulate, and in fact need such stability so as to effectively implement and administer the agreements with a minimum of costly and time consuming litigation of disputes. Finally, achieving the goal of awards which are harmonious and consistent in the interpretation and application of the Agreement(s), is further justified on the grounds that it will tend to improve the labor management relationship to the extent of reducing friction, contention and misunderstanding.

When such a goal has been achieved, as it has in the instant issues under consideration, continual resort to Board procedures merely serves to clutter the calendar and delay hearings and awards in matters now pending.

The facts in the instant cases are simply recapitulated. In all major respects the parties to these disputes are agreed on them. The claimants on their birthdays were not required to work, but instead were assigned "off" on their respective birthdays with pay. In each instance another carman was assigned and performed the work, which had each claimant been at work, would have been performed by each claimant, and not by the carman assigned.

Article II, Section 6(g) of the November 21, 1964 Agreement 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."

The pertinent part of Note to Rule 5, is as follows:

"Notice will be posted (5) days preceding a holiday, listing the names 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."

Award 5236 construed the above with admirable brevity and clarity, as follows:

"The Note to Rule clearly provides that when positions have to be filled on holidays they shall be filled from among those who would have worked if the holiday had not occurred. It further provides that men so assigned 'will protect the work.'

A birthday holiday differs from others in that it relates only to an employe whose birthday anniversary it happens to be. However, under the provisions of the Note to Rule 5 of the current agreement, and Article II, Section 6(g) of the Agreement, of November 21, 1964 he must work on that holiday and protect the work, **if his position is worked on that day.**" (Emphasis ours.)

In each of the claims under consideration an employe performed the work that Claimants Brooks, Collins and Womble would have performed on their birthday had they been at work, and thus under the language of Article II, Section 6(g) and Note to Rule 5 cogently construed above, each claimant was denied that to which he was entitled to under the agreement.

Analysis and study of Carrier's ex parte and rebuttal briefs and their related correspondence reveals that the grounds for refusing these claims rests on misconstruance of the above Award and Article II, Section 6(g) and the Note to Rule 5.

Paraphrasing of Carrier's misconstruance is as follows:

Because a birthday holiday is a holiday for only one employe and is perforce a regularly assigned work day for all others, the Carrier has contractual sanction to work a reduced work force and Carrier does not have to resort to the procedures set forth in the Note to Rule 5.

The above paraphrasing is drawn from the Ex Parte Brief, Page 8, Docket 5966, and in addition appears in the Briefs submitted in Dockets 5958 and 5952. The above thesis lacks either logical support or citation from the Agreement. Article II, 6(g) and Note to Rule 5 provides for no exceptions. The Carrier was discharging its obligations under the agreement in giving the Claimants, on their birthday, a day off with pay. However, when Carrier found that work had to be performed, which would have been performed by Claimants had they been at work, and when Carrier assigned that work to other employes, it denied the three Claimants what was their right under the Agreement.

Note to Rule 5 provides in the first instance for a procedure to deal with the situation where some men are off on their "regular holidays" and some men are needed by the Carrier. In essence the procedure requires that the local Committee be notified of the number needed; the local Committee furnishes the names of those who will work from among those who would work the shift on which the holiday falls; the list of men so assigned is posted 5 days prior

to the holiday; those so assigned will protect the work; in the event no sufficient men are listed, junior men are to be assigned, the most junior first. The reasons behind the above procedures, as well as such agreed on variations as furnishing men for work, on one of the seven regular holidays, from a rotating overtime Board are obvious.

As noted previously, Carrier has construed Note to Rule 5 as not being applicable to birthday holidays. But Carrier also misconstrued its clear meaning, as described above, when applying Note to Rule 5 in the instant claims.

Carrier's brief correctly states (page 8 of Carrier's Brief in Docket 5958) that:

“. . . Carrier is not obligated to require (Brooks) to work on the seven recognized holidays nor is the Carrier obligated to require him to work on his birthday holiday.”

The above citation is accurate to the extent that it states what the Carrier is **not** required to do. However, the issue in the instant claims is the extent of Carrier's positive obligations, not on one of the seven regular holidays but on a birthday holiday. Carrier's obligation is to implement Note to Rule 5, i.e., assign work that needs to be performed on a birthday holiday to those employes who, were it not their birthday holiday, and were they not assigned, would have been there to perform it.

The Board noted previously, that there exists variants to Note to Rule 5. These variants take the form of local agreements to use a rotating Overtime Board to meet Carrier manpower needs on holidays, and to allocate among a group of employes, who shall work on each of the seven regular holidays and who shall be “off” on that holiday.

Such variants have a sound and obvious justification, namely to distribute as fairly as possible the benefits of working on a holiday among those who so wish to work.

However, the above in no way whatsoever erodes the right of an employe, who may be assigned off on his **birthday holiday**, whose job, position or assignment is not blanked, but whose job position or assignment is filled by some other employe who in fact performs the work the employe on birthday holiday would have performed had he been at work, to justly claim that Carrier has deprived him of a right clearly established in Note to Rule 5.

The Board has gone to considerable lengths in its opinion solely for the purpose of putting to rest the issues considered herein, and thus permitting avoidance of further future adjudication of what appears to be a relatively straight-forward matter of contract administration.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.