

Award No. 5293

Docket No. 5444

2-N&W-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the Agreement of January 1, 1943, and subsequent amendments thereto, including the November 21, 1964 Agreement between the Virginian Railway and the employees represented by System Federation No. 40, now under the jurisdiction of System Federation No. 16, on the New River Division of the Virginian Railway specifically at Elmore Shops, Elmore, West Virginia, when they refused to allow Carman C. R. Bailey, Jr., additional compensation as requested for eight (8) hours service performed on date of May 31, 1965, which was a legal holiday (Decoration Day) and also his birthday holiday.

2. That accordingly, the Norfolk and Western Railway Company be ordered to allow Carman C. R. Bailey, Jr. an additional eight (8) hours, at the time and one-half rate for service performed May 31, 1965.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was required to work eight hours on May 31, 1965, which was not only a holiday but also his birthday. He received eight hours pay for the Holiday, as well as a like amount for his birthday and eight hours pay at the time and one-half rate for working on that day.

Petitioner contends that Claimant is entitled to another payment at the time and one-half rate since he performed work on both his birthday and the Holiday. We disagree. The parties plainly anticipated this specific situation in

Article II Section 6 (f) of their November 21, 1964 Agreement, which provides that "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."

Claimant did not exercise his option to celebrate his birthday on a date other than Decoration Day and there is no sound basis for awarding duplicate payments for the same eight hours work.

In line with Award 5218 and the many other awards cited therein that have passed upon precisely the same issue and rules as are now before us the present claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1967.