

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, W. H. Grace, Lead Carman, is entitled to eight (8) hours' pay at the overtime rate for July 24, 1971, his birthday-holiday, account his job being blanked and others performing his work.
2. That accordingly the Illinois Central Railroad be ordered to compensate W. H. Grace, Carmen, eight (8) hours' pay at the overtime rate for July 24, 1971.

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 was assigned as a Lead Man and Record Writer with a work week of Wednesday through Sunday. His birthday fell on Saturday July 24, 1971 and he was required to take the day off (with pay). His foreman, who is the train yard supervisor, performed certain duties which had been normally performed by Claimant, on the day in question. The duties identified specifically were preparing a switch list and Form 1458 (which directs certain work to be performed on freight cars).

Petitioner claims that it has been the practice in the past for the Leadman-Record Writer to work his job on his birthday-holiday. In support of this contention Petitioner points to an instance on June 2, 1971 when a lead man worked his birthday-holiday. Carrier rejoins by the assertion that leadmen are only permitted to work on their birthday holidays when no foreman was on duty, which was the case on June 2, 1971. No further evidence was presented to substantiate the past practice.

The Organization further argues that the foreman performed the duties of the Claimant's position on the birthday-holiday and Claimant should have been called in to perform the work. In support of this argument Petitioner has described the two activities of the completion of Form 1458 and the switch list, which activity has not been

denied by Carrier. Carrier asserts, however, that his work was not reserved exclusively to Claimant but is also performed by the foreman as part of his normal duties. Carrier argues that the foreman is primarily responsible for supervision of the work force and some of his responsibility is delegated to the lead man.

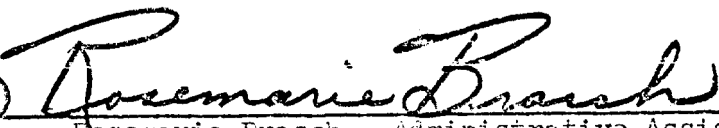
The Organization does not contest the right of Carrier to blank a position on a birthday-holiday; rather it rests its position on the two arguments described above. With respect to both contentions the record is devoid of probative evidence. Petitioner has simply not sustained its burden of proof with respect to either the past practice of working a leadman on his birthday or the exclusive reservation of the work to the leadman. For this reason we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

B. 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.