

Award No. 5264

Docket No. 5162

2-C&O-FO-'67

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1—That under the current agreement, Laborer Clarence Anderson was improperly denied pay in the amount of eight hours at time and one-half rate for February 22, 1965, which was his birthday-holiday.

2—That accordingly the carrier be ordered to additionally compensate employe in the amount of eight hours pay at the time and one-half rate for his birthday-holiday, February 22, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** Clarence Anderson, hereinafter referred to as the claimant, was employed by the Chesapeake & Ohio Railway Company, hereinafter referred to as the carrier, as a laborer on September 9, 1926. Subsequently the claimant exercised his seniority rights to secure a seasonal position of stationary fireman in the carrier's shops at Hinton, West Virginia. On February 22, 1965, the claimant held a regular assigned position of stationary fireman, working 11:00 P. M. to 7:00 A. M., Saturday through Wednesday, with regular rest days of Thursday and Friday.

The claimant worked his regular assigned position of stationary fireman on Monday, February 22, 1965, which was a recognized national holiday, Washington's Birthday, and was also the claimant's birthday-holiday. The claimant was paid at eight hours straight time rate for Washington's Birthday, time and one-half for working on Washington's Birthday, and eight hours straight time rate for his birthday-holiday. He was not allowed time and one-half for working his birthday-holiday.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer, all of whom have declined to make a satisfactory adjustment.

The current agreement, effective September 30, 1938, revised June 16, 1953, as subsequently amended, particularly by Agreement of November 21, 1964, is controlling.

**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 required to work eight hours on February 22, 1965 (Washington's birthday), 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 payemnt 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 employe'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 Washington's Birthday and there is no sound basis here 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.