While this proposal has never been accepted, it is obvious that the Brotherhood was seeking to abolish the "maintenance of take-home pay" doctrine. Carrier can readily accept the Brotherhood's desire to eliminate the principle by the negotiative process; however, such a result is not properly achieved by prostituted interpretation of accepted principles embodied in existing agreements or by the allegation of non-existent rights. Moreover, Article III–Holidays of the Brotherhood's Section 6 proposal of May 17, 1966 utilized for the first time in a holiday provision the expression, ". . . guaranteed 8 hours' pay . . .":

"ARTICLE III. HOLIDAYS

Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, and the Agreements of November 20, 1964, and February 4, 1965, is hereby amended to read as follows:

Section 1. (a) Effective January 1, 1967, each hourly, daily or weekly rated employe shall be guaranteed 8 hours' pay at the pro rata hourly rate of the position on which he last worked before the holiday in addition to any other payments required for each of the following nine enumerated holidays * * * Employe's Birthday."

Again, this proposal has never been adopted. Such a proposal to regard birthday–holiday compensation as "guaranteed" and the use of such an unambiguous adjective is reflective of the Brotherhood's desire to achieve a right which it does not currently possess.

In view of the analysis and reasoning advanced herein, carrier submits that the claim of the Brotherhood should be dismissed or denied in its entirety.

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.

That 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, a Coach Cleaner, was regularly employed by Carrier with workweek Saturday through Wednesday, rest days Thursday and Friday. May 6, 1967, his birthday, was also one of his vacation days. He was paid a day's vacation pay. He did not receive birthday holiday pay. Citing Article II–Holidays of the National Agreement of November 21, 1964, as having been violated by Carrier, the Claim is for 8 hours' birthday–holiday pay at pro rata rate. This Division was confronted with the same issue on this property in Awards 5230, 5898, 5899 and 5904 in each of which the Claim was denied. Applying the principle of stare decisis to the issue as resolved on this particular property, we will deny the Claim.

Award No. 5977
Docket No. 5710
2-RDG-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Reading Company violated Article II, Section 6, paragraph (a) of the November 21, 1964 Agreement.

2. That, accordingly, the Reading Company compensate Coach Cleaner Carlton Huffman eight (8) hours at the straight time rate of pay for his birthday while on vacation, which was denied.

EMPLOYES' STATEMENT OF FACTS: Coach Cleaner Carlton Huffman, hereinafter referred to as claimant, was regularly employed by the Reading Company, hereinafter referred to as carrier, at Reading Terminal, Philadelphia, Pennsylvania, with workweek Saturday through Wednesday, rest days Thursday and Friday.

Claimant's birthday holiday occurred while he was on vacation May 6, 1967, for which he was paid a day's vacation pay. However, carrier failed to allow him birthday holiday compensation for the day.

Claim for the additional eight (8) hours' pay was filed with the proper officers of the carrier, up to and including the highest office so designated to handle such claims, all of whom declined to make satisfactory adjustment.

The agreement effective January 16, 1940 as subsequently amended, particularly by the Agreement of November 21, 1964 is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the carrier erred when it failed and refused to allow claimant eight (8) hours birthday holiday pay for his birthday May 6, 1967, in addition to vacation pay allowed for the day.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1970.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.