

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John H. Dorsey, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES****THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5838) that:

(a) The Carrier violated the terms of the current Agreement when it failed to properly pay Mr. B. H. McNealy for January 1, 1965, and

(b) Mr. B. H. McNealy shall now be additionally paid for January 1, 1965 one day at time and one-half.

EMPLOYEES' STATEMENT OF FACTS: 1. Claimant B. H. McNealy was the incumbent of Yard Clerk position No. A-141, hours 8:00 A. M. to 4:00 P. M., relief days Saturday and Sunday, rate \$22.16 per day.

2. On January 1, 1965 New Year's Day and also Claimant's birthday, the Carrier required him to work eight hours. The Carrier paid Claimant one day at time and one-half for working. (Claimant was paid two prorata days' holiday pay, which was correct and is not here at issue.

3. Claim that Mr. B. H. McNealy should be paid an additional day at time and one-half his rate of \$22.16 was filed on February 24, 1965 and, being declined, was timely appealed to Carrier's highest officer designated to receive and consider such appeals. Conference was held on July 8, 1965 and Carrier denied the claim by letter dated August 5, 1965. (The 60 days Carrier had to reply to our appeal of May 27, 1965 was extended by Agreement). Copies of all correspondence in connection with the claim are attached and identified as Employees Exhibits "A" through "G". (Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: There is on file with the Third Division, National Railroad Adjustment Board, General Agreement No. 8, effective November 1, 1955, covering clerical employes on the Chesapeake District of the Carrier. Such agreement is made a part of the record in this case by reference.

There is also on file with the Third Division, National Railroad Adjustment Board, Mediation Agreement of November 20, 1964, Cases A-7127 and A-7128, Article II of which covers employes receiving one additional day off with pay, or an additional day's pay, on such employee's birthday. Such agreement is made a part of the record in this case by reference.

Claimant B. H. McNealy was regularly assigned to position of Yard Clerk, A-141, rate \$22.16 per day, 8:00 A. M. to 4:00 P. M., Monday through

OPINION OF BOARD: Rule 39 of the basic Agreement provides in pertinent part:

"(b) Holiday Work. Work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half."

The parties herein are also parties to the National Mediation Agreement executed November 20, 1964, hereinafter referred to as the Mediation Agreement. Article II—HOLIDAYS, Section 6 of the Mediation Agreement reads insofar as material and relevant:

"(f) . . . 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.

"(g) Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

Claimant's birthday was New Year's Day, January 1, 1965. For working that day he was paid:

8 hours at straight time as holiday pay (New Years Day);

8 hours at straight time as birthday holiday pay;

8 hours at rate of time and one-half for the 8 hours service performed.

The Claim is that he should have been paid an additional 8 hours pay at time and one-half for having worked on his birthday.

The provisions of the Agreements quoted, *supra*, persuade that Claimant's entitlements for working on New Year's Day were 8 hours at pro rata rate for New Year's holiday pay plus 8 hours at time and one-half for working that day. He then was put to electing another day to be observed in lieu of his birthday as prescribed in Article II, Section 6 (f) of the Mediation Agreement. Cf. Award No. 14921. We will deny the Claim.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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; and

That Carrier did not violate the Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.