

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5886) that:

(1) Carrier violated the Clerks' Agreement when it refused to properly compensate B. Rimus, employed in Freight House No. 10, Chicago, Illinois, as a checker, for time worked on January 24, 1965, a regularly assigned rest day which was also his birthday.

(2) Carrier shall now be required to compensate B. Rimus for eight (8) hours at the time and one-half rate, a total of \$33.58, in addition to that paid for service performed on January 24, 1965.

EMPLOYEES' STATEMENT OF FACTS: There is in force and effect a collective bargaining Agreement by and between the parties bearing date of August 14, 1950, revised January 1, 1963, a copy of which is on file with the Board, and by reference is made a part of this submission. This Agreement was amended by the November 20, 1964 Mediation Agreement.

The claim was handled on the property, in the usual manner, through the highest designated officer of the Carrier designated to handle such matters, and the dispute was not resolved.

The claimant worked on Sunday, January 24, 1965, which was his rest day and also his birthday. He was paid eight (8) hours at time and one-half for working his rest day and eight (8) hours at pro-rata time as birthday pay. He was not paid eight (8) hours at time and one-half for working on his birthday holiday.

Claim was filed by Local Chairman S. Graff on February 21, 1965 in behalf of Mr. Rimus for eight (8) hours at time and one-half, total amount of claim \$33.58. (Employees' Exhibit No. 1.) Reply was received from Superintendent M. L. Zadnichek dated March 2, 1965, in which he declined the claim. (Employees' Exhibit No. 2.)

The claim was appealed by Vice General Chairman L. L. Zych to Staff Officer J. D. Dawson on April 9, 1965, who is the highest officer to whom appeals may be made. (Employees' Exhibit No. 3.)

Conference was held on May 6, 1965 with Mr. Dawson, who then verbally declined the claim, and on May 10, 1965, same was declined in writing. (Employees' Exhibit No. 4.) Further conference was held on June 24, 1965, resulting in no change in the Carrier's position.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Claimant in this case was regularly assigned as a Checker at Freight House No. 10, Chicago, Illinois, where work is performed for the Universal Carloading and Distributing Company, Incorporated, by the employees of this Carrier. This position was assigned on a Monday through Friday basis, but on Sunday, January 24, 1965, it was necessary to work a partial force at this facility in order to clean up a backlog of freight shipments.

Claimant Rimus had signed up for overtime work at this facility, along with other employees, so was permitted to work on this rest day in accordance with his request, even though it was also his birthday. For performing 8 hours' work on the claim date, Checker Rimus was paid 8 hours pro rata for his birthday and 8 hours at time and one-half for working, or, a total of 20 hours' pay for 8 hours of work.

The Organization is claiming an additional 8 hours at the punitive rate, or the equivalent of 12 additional pro rata hours, on the premise that because of the new birthday-holiday provision contained in the November 20, 1964 Mediation Agreement indicating birthday-holidays are to be handled the same as the specified legal holidays, Rule 8 (Rest Days and Holiday Work) of the current collective agreement should now be interpreted to provide overtime on overtime pay when an employee is used on a rest day which also happens to be his birthday.

The Schedule of Rules Agreement, effective August 14, 1950 and revised as of January 1, 1963, covering employees who perform work of The Universal Carloading and Distributing Company, Inc., represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who are employed at Chicago Freight House No. 10 and the Universal Freight House at Minneapolis, Minnesota, is on file with the Board and by this reference is made a part of this submission.

OPINION OF BOARD: Claimant here indicated his availability for overtime work. On January 24, 1965, Carrier called him to work, and he responded. It so happened that January 24 was his birthday, and, consequently, a holiday for him. It was also his assigned rest day.

He was paid eight hours pro rata for his Birthday Holiday, and eight hours at time and one-half for service on his rest day. Organization now seeks eight hours' pay at time and one-half for "working on his birthday holiday."

The August 19, 1960 National Agreement extended paid holidays to other than regularly assigned employees, who had, theretofore not been eligible for such paid holidays.

The 1964 Agreement (Section 6) provides:

"Subject to the qualifying requirements set forth below, effective with the calendar year 1965, each hourly, daily and weekly rated

employee shall receive one additional day off with pay, or an additional day's pay, on each such employee's birthday as hereinafter provided:

(a) For regularly assigned employees, if an employee's birthday falls on a work day of the work week of the individual employee, he shall be given the day off with pay; if an employee's birthday falls on other than a work day of the work week of the individual employee, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any.

* * * * *

(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."

So far as "existing rules and practices" are concerned on this property with respect to the requirement that an individual's birthday is to be treated the same as one of the specified legal holidays, the record here, dating back to February 22, 1953, shows that in ten specific instances a total of 3,276 employees worked under circumstances identical to those involved in the instant case, and "not a single claim or protest was filed. Each of them was paid 20 hours or 2½ days' pay, which is exactly what the claimant in this case received."

Carrier observes:

"The absence of a single claim involving more than three thousand identical cases, leaves no doubt whatever as to the past practice that has been followed at this facility without prior complaint nor 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1967.

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