

Award No. 15598
Docket No. CL-15927

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5890) that:

(a) The Carrier violated the Agreements between the parties Monday, January 4, 1965, when it failed to call extra board Mail Handler, H. A. Clark, and;

(b) The Carrier shall now be required to make H. A. Clark whole for loss of compensation January 4, 1965, in the amount of 8 hours' pay at the rate of Mail Handler applicable to him.

EMPLOYEES' STATEMENT OF FACTS: Claimant as of date of claim was an extra man subject to being called in accordance with the provisions of a Memorandum Agreement between the parties signed April 25, 1957, and amended October 1, 1959 and January 14, 1964. Copy of the amended Agreement is attached as Employees' Exhibit No. 1. This Agreement is also identified as Appendix H of the printed Agreement, with the exception that Exhibit No. 1 carries the January 14, 1964 amendment to Article II, Section (d).

Claimant Clark's birthday occurred Monday, January 4, 1965. Although possessing sufficient seniority to be called, the Carrier did not call him pursuant to a notice posted January 1, 1965, by the Mail Agent, Mr. V. F. Juel, reading:

"January 1, 1965
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B U L L E T I N

Employees in the Mail and Baggage Department affected by provisions of the Mediation Agreement made the 20th day of November, 1964, whose birthday falls on a work day of their work week, will not be permitted to work on their birthday without authority from my office.

/s/ V. F. Juel

cc: H. L. Baker
C. T. Cook
H. W. Dunn
O. A. Brown"

The Board's attention is directed to Employees' Exhibit No. 3 and the fact there stated that claim was filed for one day at pro rata. Inasmuch as the claim was so stated on the property, we restrict ourselves to same here. However, the claim should have been at the rate of time and one-half for work on a holiday, in accordance with Rules 38 and 43 (b).

The communications between the parties gives evidence that the claim was filed and appealed timely, and that the highest Carrier officer declined the claim. Conference was held with Manager of Personnel Llewellyn June 8, 1965.

A dispute exists, and by this brief is submitted by the Employees to the Third Division, National Railroad Adjustment Board, under the provisions of the Railway Labor Act, amended, for consideration and Award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant Extra Mail Handler H. A. Clark was assigned to the extra board. Extra employees are called in seniority order to fill short vacancies in the Mail and Baggage Department.

Monday, January 4, 1965, was Claimant's birthday, and he was not called for service.

Claim was submitted for a day's pay at pro rata rate account not called for service in seniority order on January 4, 1965.

OPINION OF BOARD: The Mediation Agreement of November 20, 1964, amended Article II--Holidays of the August 21, 1954 National Agreement as amended by Agreement of August 19, 1960, by adding the birthday of each employe to the list of holidays subject to prescribed qualifying requirements. The issue in this case is whether an extra employe who fails to qualify for holiday pay on his birthday has a contractual right to work on that day when absent his birthday he would have worked.

It is undisputed that an extra employe junior to Claimant worked on Claimant's birthday.

Carrier's only defense raised on the property is that Claimant was "laid off in seniority order in accordance with Rule 46 (e)", which reads:

"Holiday force reductions in Mail and Baggage Handler positions, Mail and Baggage Department, when made, shall be on a seniority basis on a given tour and the positions will lose their identity on those days; that is, positions may be combined when necessary."

Carrier introduced no evidence of a force reduction on Claimant's birthday. The fact that an extra employe junior to Claimant worked is evidence to the contrary. We find Carrier's proffered defense without merit, and proceed to determine whether Petitioner has satisfied its burden of proof that Carrier violated the Agreement.

A holiday is an unassigned day on five and six day positions under the Agreements and can be blanked by Carrier. However, it is well established by a long line of Awards of this Division that if such a position is worked on a holiday, the right to the work is vested in the regular employe. Award Nos.

7134, 7136, 10290, 10848, 11058, 12221, 9203, 12702, 12780, 12957, 14392. See also Award Nos. 12189, 15227, 15398, 15440. That this principle is equally applicable to extra employees is made clear by Article II, Section 6 (a) and (b) of the November 24 Mediation Agreement which respectively provide for "regularly assigned employees" and "other than regularly assigned employees" relative to birthday holiday pay; and Article II, Section 6 (g) of that Agreement which reads:

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

Predicated on the foregoing case law and Agreement provisions we find that Carrier violated the Agreement as alleged in paragraph (a) of the Claim, and we will award compensation to the extent prayed for in paragraph (b).

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1967.