Award No. 15761
Docket No. MW-16053

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to properly compensate Mr. O. E. Byrd for work performed on Monday, February 22, 1965, his birthday holiday and also Washington's Birthday holiday.

[Carrier's File E-323-14 E 232]

(2) Mr. O. E. Byrd now be allowed eight (8) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant was regularly assigned as a drawbridge tender at the Three Mile Creek Drawbridge, with a work week extending from Monday through Friday (Saturdays and Sundays were rest days).

On Monday, February 22, 1965, which was one of the claimant's assigned work days, his birthday, and one of the seven designated holidays (Washington's Birthday), the claimant was required to perform eight (8) hours of work on his regular assignment, for which he was compensated at his time and one-half rate. Although he was entitled to eight (8) hours' pay at his time and one-half rate for the service performed on February 22, 1965 under Rule 29(c) and also under Section 6 of Article II of the November 20, 1964 Agreement, the Carrier failed and refused to allow him an additional eight (8) hours' pay at his time and one-half rate.

In addition to the compensation he received for working on Monday, February 22, 1965, the claimant was allowed eight (8) hours of pro rata pay as birthday pay and also eight (8) hours' pay at his straight time rate as holiday pay.

Claim was timely and properly presented and handled by the Employes at all stages of appeal, up to and including the Carrier's highest appellate officer.

Dear Sir:

Your letter of May 19, File 1-17, relative to claim that O. E. Byrd was improperly paid for February 22, 1965.

We do not agree with your interpretation of the agreement in this matter. According to our interpretation, Mr. Byrd should have been paid as follows for working on his birthday, which was on February 22:

8 hours at pro rata rate as birthday pay.

8 hours at time and one-half rate for working on birthday and/or holiday.

8 hours at the straight time rate as holiday pay.

The records show that Mr. Byrd has been paid as shown above. We, therefore, see no basis for the claim, and it must stand as declined.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

Nothing further was heard from the matter until notice was received from your Board that employes intended to file an ex parte submission in the dispute.

OPINION OF BOARD: Claimant was required to work his regular position on a legal holiday, which was also his birthday. Claimant was paid eight hours at straight time as birthday pay, eight hours at straight time as holiday pay, and eight hours at time and one-half for the eight hours' service performed. The claim is for an additional eight hours' pay at the time and one-half rate for Claimant working on his birthday.

The same issue of the interpretation of Article II–Holidays, Section 6(f) and (g) of the November 20, 1964 National Mediation Agreement has been before this Board in numerous recent dockets. If an employe's birthday falls on a holiday, he can elect to celebrate his birthday on another day, as set out in Article II, Section 6(f).

See Awards 14921, 14922, 15013, 15388, 15401, 15451, 15520, 15563 and 15585.

We will follow the precedent established by these awards and deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 21st day of July 1967.

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