



Award No. 15950
Docket No. CL-16419

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6066) that:

(a) The Carrier violated the Agreement when on Monday, February 22, 1965, a legal holiday, it required Mr. E. O. Hampson, the regularly assigned Utility Clerk, to observe and remain away from work on the holiday, after which it required other employees to perform the work on position 7-247 Utility Clerk on the holiday; and

(b) The Carrier shall now be required to make full and proper payment of 8 hours' time at the rate of time and one-half to Mr. O. E. Hampson for date of February 22, 1965.

EMPLOYES' STATEMENT OF FACTS: Mr. O. E. Hampson is the regular assignee to Utility Clerk position No. 7-247, with assigned hours from 4:00 P. M. to midnight daily, Monday through Friday with assigned rest days of Saturday and Sunday, a five-day position. Mr. Hampson holds a class (a) clerical seniority date on the Master Terminal Seniority Roster of April 14, 1941.

Prior to the date of February 22, 1965 Mr. Hampson was verbally instructed by the Assistant Chief Clerk that he would be excused on the holiday of Washington's Birthday, whereupon Mr. Hampson remained away from his work on February 22nd and, having qualified under provisions of the Holiday Rule, was allowed a straight-time day's pay at the pro-rata rate.

On Washington's Birthday, which is nominally observed by all industries within the City of Ogden and within the environs of this city manufacturers, wholesale industries, grain mills, all retail stores, and others, which also includes the railroad industry are open for "business as usual" on this holiday. Observance of the holiday is limited to City, County, State and Federal offices and schools, with no other exceptions of which we could learn.

On February 22, 1965 the customary, normal and usual business existed and was performed at the surrounding industries, grain mills and flour mills, consequently the customary, normal and usual work of the railroad existed for performance in connection with the work on Utility Clerk Position 7-247, to

position to which assigned pursuant to contract provisions set forth in the Agreement allowing holiday pay. (Rule 15 (c).)

On such holidays, it has been the practice for the Steno-Clerk to issue "special switch orders" as instructed by the General Yardmaster, from instructions issued by the Chief Clerks and Assistant Chief Clerks designating cars that are to be moved.

Subsequent to the February 22 holiday, on which Claimant did not work his position, claim was initiated against the Carrier alleging violation of the Agreement when Claimant was required to remain away from work on the holiday and other employees were permitted to perform some of the work of his assignment.

The claim was appealed on May 10, 1965 by the General Chairman of the Organization to the Carrier's Assistant to Superintendent R. S. Barr. (Carrier's Exhibit A.) This claim was denied June 21, 1965 (Carrier's Exhibit B), and was subsequently appealed to the Carrier's Vice President, Mr. G. A. Cunningham, July 5, 1965. (Carrier's Exhibit C.) The claim was further denied by the Carrier's Vice President on July 13, 1965 (Carrier's Exhibit D), and affirmed after conference discussion as evidenced in the Carrier's Vice President's letter March 1, 1966. (Carrier's Exhibit E.) The denial of the Carrier's highest officer of appeal, Vice President Mr. G. A. Cunningham, was not accepted by the Organization, and the issue now finds itself before the Adjustment Board for final adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant here was a Utility Clerk, holding position 7-247 on the February 22, 1965 holiday.

There is abundant evidence, without contradiction, in this record that work normally performed by the Claimant (Utility Clerk) on regular work days was performed by other than Claimant on the holiday in question. A sustaining Award is required.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1967.

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