



Award No. 16035
Docket No. CL-16328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6017) that:

(1) Carrier violated the terms of the currently effective Clerical Agreements between the parties, including the National Mediation Agreement of November 20, 1964, when it refused and continues to refuse to properly compensate Mr. C. W. Clay, Birmingham, Alabama, for time worked on July 5, 1965, a National Holiday which was also Claimant's birthday.

(2) Carrier shall now be required to properly compensate Claimant C. W. Clay for an additional eight hours at the time and one-half rate of Record Clerk Position No. 70 in the total amount of \$33.7350 in addition to compensation paid for service performed July 5, 1965 already received.

EMPLOYEES' STATEMENT OF FACTS: On the claim date, July 5, 1965, Mr. Clay was regularly assigned to Record Clerk Position No. 70, rate of pay \$22.49 per day, hours of assignment 3:00 P.M. to 11:00 P.M. with a work week of Thursday through Monday, rest days Tuesday and Wednesday. Monday, July 5, 1965, was observed as the National Fourth of July Holiday and was a regularly assigned work day of the position occupied by Claimant Clay, July 5th also being the birthday of Claimant Clay.

Carrier compensated Mr. Clay for two pro rata days as holiday pay and one day's pay at the time and one-half rate for working the National Holiday, but failed to properly compensate him for time and one-half for service performed on his birthday holiday, as provided in the General Rules Agreement and the National Mediation Agreement of November 20, 1964.

These claims have been handled with Management up to and including the Director of Labor Relations, but not composed. See Employees' Exhibits 1(a) through 1(d), inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On the date of the occurrence in question, the claimant, C. W. Clay, was filling a temporary vacancy on Record Clerk Position No. 70, rate \$22.49 per day, in the Carrier's Yard Office at Thomas Yard (Birmingham, Alabama). The claimant's assigned hours and work week assignment on the seven-day position were 3:00 P.M. to 11:00 P.M., Thursday through Monday, with Tuesday and Wednesday rest days. The rest days of the position are included in Relief Position No. 23. In the absence of the regular relief employe, and in the absence of an available extra employe, the claimant was the regular employe entitled under the controlling Schedule Agreement to render service on his rest day, July 5, 1965. The claimant was so used, but it so happened that Tuesday, July 5, 1965, was also the claimant's birthday.

The claimant worked the hours of his regular work week assignment on Tuesday, July 5, 1965. The compensation received by the claimant on this day was in the aggregate amount of 28 hours at the pro rata rate of pay of the position. The 28 pro rata hours represent eight hours for birthday holiday pay, eight hours for Fourth of July holiday pay, and 12 hours for work performed. The 12 hours for work performed is the equivalent of eight hours at the time and one-half rate of pay.

The claim before this Division is that the claimant should have been compensated for an additional eight hours at time and one-half rate (12 hours at pro rata rate) because his birthday coincided with the service rendered by him on his rest day, July 5, 1965. See Carrier's Exhibits A and A-1, attached hereto and made a part hereof.

The difference between compensation claimed less compensation allowed is \$33.7350, and that is the claim before this Division.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns payment due Claimant for service performed on a legal holiday which was also his birthday. Claimant did not elect to have another day considered as his birthday which was his right under Section 6 (f), Article II, of the November 20, 1964 Agreement.

The Board has previously dealt with and discussed the question of payment for work performed on a day which was, as here, both a birthday holiday and a legal holiday in Awards 14921, 14922 (Zumas); 15013, 15388, 15451 (Dorsey); 15401 (House); 15520 (Woody); 15563 (Lynch); 15585 (House) and 15589 (Harr).

We will follow the reasoning of those awards and 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 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 Carrier did not violate the Agreement.

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 January 1968.