

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

On behalf of Signal Maintainer J. McMahon for an adjustment of eight (8) hours time and one-half pay for services rendered on February 22, 1965. (Carrier's File: 140, Item 116. General Chairman's File: #247).

EMPLOYEES' STATEMENT OF FACTS: Mr. J. McMahon is the second trick Signal Maintainer at West End Interlocking. While he normally works eight hours per day five days per week, the position is filled twenty-four hours per day seven days per week.

Mr. McMahon worked February 22, 1965, his regular work day which was Washington's Birthday and also his birthday. He was paid eight hours' pro rata holiday pay for Washington's Birthday, eight hours' pro rata holiday pay for his birthday, and eight hours' overtime pay for service performed on Washington's Birthday. This dispute is based on our contention Carrier is contractually obligated to compensate him an additional eight hours' overtime pay for service performed on his birthday.

The claim was initiated by Local Chairman J. J. Swiss on February 27, 1965, subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent correspondence exchanged on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 8.

There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute. Amendments include Article II of the August 21, 1954 Agreement and Article II of the November 20, 1964 Agreement.

CARRIER'S STATEMENT OF FACTS: At the time of claim J. McMahon, hereinafter referred to as claimant, was working as Signal Maintainer, Tuesday through Saturday, 2d trick, West End Interlocking, Jersey City, New Jersey. Claimant worked his position on February 22, 1965, Washington's Birthday, which also happened to be his birthday and for this he was paid one (1) day at straight time for Washington's Birthday, one (1) day at straight time in lieu of his birthday holiday as such, and eight (8) hours time and one-half for work performed on February 22, 1965.

Under date of February 27, 1965 (Exhibit A) claim was instituted with Signal Supervisor by the Local Chairman and denied on April 20, 1965. It was

thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters, where it was denied and discussed in conference on October 21, 1965 with denial confirmed on October 25, 1965 (Exhibit B).

OPINION OF BOARD: Claimant worked his regular position on a legal holiday, February 22, which was also his birthday. He was paid eight hours at the pro rata rate of pay as birthday pay, eight hours at the pro rata rate as holiday pay and eight hours at the time and one-half rate for working the holiday. The Claim is for an additional eight hours at the time and one-half rate for working on his birthday.

This same issue has been before this Division in a number of dockets and it has been held that if an employee's birthday falls on a legal holiday he can elect to celebrate his birthday on another day as set out in Article II Section 6(f) of the November 20, 1964 National Agreement.

We will deny the Claim. Awards 15013, 15401, 15589, 15908, 15942, 15949.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1968.