

**Award No. 16291**

**Docket No. CL-16215**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Jerry L. Goodman, Referee**

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5968) that:

1. Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota when it failed to properly compensate employe R. E. Lehman for work performed on February 28, 1965, which was his birthday, as well as one of his assigned rest days.

2. Carrier shall now be required to compensate employe Lehman an additional eight (8) hours at the penalty rate of pay of Yard Clerk Position No. 1408 for working on Sunday, February 28, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** Employe R. E. Lehman is the regularly assigned occupant of Yard Clerk Position 1408 at St. Paul, Minnesota. His hours and days of assignment are 7 A.M. to 3 P.M., Monday through Friday, with Saturday and Sunday rest days.

Position 1408 is a 7-day position with relief provided by Relief Yard Clerk Position No. 3 on the Saturday and Sunday rest days.

On Sunday, February 28, 1965, which was both one of employe Lehman's assigned rest days and his birthday holiday, Carrier called and used him to fill Yard Clerk Position 1408.

Employe Lehman was allowed 8 hours at the pro rata rate for his birthday holiday and 8 hours' pay at the penalty rate for working Position 1408 on the birthday holiday.

Claim for an additional 8 hours at the penalty rate of Position 1408 was submitted by employe Lehman and was declined in turn by Mr. J. G. Messicci, General Car Supervisor, to whom the claim was submitted in the first instance, and by Mr. N. H. McKegey, Superintendent, and Mr. S. W.

Amour, Assistant to Vice President, to whom the claim was submitted on appeal.

Submitted as Employees' Exhibits A, B, C, D, E and F, are the following:

**EXHIBIT A** - Copy of Mr. Messicci's letter of March 31, 1965, declining payment of the claim.

**EXHIBIT B** - Copy of General Chairman's letter to Mr. Messicci dated April 28, 1965.

**EXHIBIT C** - Copy of Superintendent McKegney's letter to the General Chairman dated June 1, 1965.

**EXHIBIT D** - Copy of the General Chairman's reply to Mr. McKegney dated June 11, 1965.

**EXHIBIT E** - Copy of Mr. Amour's letter to the General Chairman dated August 25, 1965.

**EXHIBIT F** - Copy of the General Chairman's reply to Mr. Amour dated September 1, 1965.

Discussion of the claim during conference on February 4, 1966 produced no settlement.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Claimant R. E. Lehman is the regularly assigned occupant of Yard Clerk Position No. 1408 at St. Paul, Minnesota, which is assigned from 7:00 A.M. to 3:00 P.M., Monday through Friday with Saturday and Sunday rest days.

On Sunday, February 28, 1965, one of claimant Lehman's rest days, and also his birthday, the Carrier found it necessary to have claimant Lehman work his regularly assigned Position 1408 during his regularly assigned hours, i.e., 7:00 A.M. to 3:00 P.M. For such service on his rest day claimant Lehman was properly paid 8 hours at the time and one-half rate for working such day, i.e., Sunday, February 28, 1965, in accordance with schedule rules and a recognized past practice of long standing.

In addition to the compensation allowed claimant Lehman for working his rest day on Sunday, February 28, 1965, i.e., 8 hours at the time and one-half rate, he also qualified for and was allowed 8 hours at the straight time rate for Sunday, February 28, 1965 account that day being his birthday.

Attached hereto as Carrier's Exhibit A is a copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. C. Hopper, Acting General Chairman, under date of August 25, 1965.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was regularly assigned as Yard Clerk to work Monday through Friday and observe rest days of Saturday and Sunday. Claimant was required to work the assignment on Sunday, February 28, 1965, which was both Claimant's assigned rest day and his birthday.

Claimant was paid eight hours at the pro rata rate for his February 28 birthday and eight hours' pay at the time and one-half rate for working. Claimant seeks an additional eight hours' pay at the time and one-half rate.

The issues involved in this dispute are the same as those involved in several recent awards of this Board, such as Award Nos. 16153, 16101, 15892, 15875, 15764, 15440 and 15398, which sustained the claims. Accordingly, the instant claim will be sustained.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 by the Carrier.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.