

Award No. 16453
Docket No. CL-16655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6071) that:

(a) Carrier violated the Clerks' Agreement at Bluford, Illinois, when on Friday, January 1, 1965, a holiday and claimant's birthday, it failed and refused to properly compensate J. R. McDuffy for time worked on his regular assignment.

(b) Carrier shall now compensate Clerk J. R. McDuffy for eight hours' pay at the time and one-half rate for work performed on his birthday, in addition to the compensation previously paid him for work performed on Friday, January 1, 1965.

EMPLOYES' STATEMENT OF FACTS: Claimant J. R. McDuffy is the regular occupant of a yard clerk position at Bluford, Illinois, rate of pay \$21.42, hours 3:00 P. M. to 11:00 P. M.; rest days Tuesday and Wednesday.

On Friday, January 1, 1965, New Year's Day, one of the designated holidays, and also claimant's birthday, covered by the rules, he was required to work on his regular assignment for which service he was compensated eight (8) hours' pay at pro rata rate as holiday pay, eight (8) hours' pay at time and one-half rate for working on a holiday and eight (8) hours' pay at pro rata rate as birthday pay.

Claim was filed for eight (8) hours' pay at the time and one-half rate for working on his birthday with Train Master-Traveling Engineer E. L. Jones on February 12, 1965. See Employees' Exhibits Nos. 1-A and 1-B. On March 3, 1965, claim was appealed to Superintendent H. R. Koonce. See Employees' Exhibits Nos. 2-A and 2-B. March 10, 1965, claim was appealed to Director Labor Relations W. J. Cassin as evidenced by Employees' Exhibits Nos. 3-A through 3-I, inclusive.

The dispute was discussed with Management in conference May 7, 1965, but not resolved.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The facts in this case are not in dispute. On January 1, 1965, Clerk J. R. McDuffy, Bluford, Illinois, worked his regular assignment. This day was a legal holiday as provided in the Schedule Agreement under Rule 42(b). It also happened to be the employee's birthday compensable by the terms of Article II, Section 6 of the November 20, 1964 Agreement.

Rule 42 of the Schedule Agreement entitled the employees to the time and one-half rate for work performed on a legal holiday. Article II, Section 6(g) entitled the employee to whatever rules and practices provided which governed on a legal holiday. Rule 42, the rule governing a legal holiday, provided overtime for "work performed" on one overtime day rather than two. The relevant practice governing on a legal holiday, which was the practice followed for nearly forty years on a holiday which was also the employee's rest day, was to pay only one time and one-half day. Thus, Clerk McDuffy was paid for his services once at the time and one-half rate.

The union filed claim for a second overtime day arguing that one overtime day did not satisfy the requirements of Rule 42(b). In his letter to the Director of Labor Relations, General Chairman R. W. Copeland stated:

"The above quoted rule [Article II, Section 6(g) of the November 20, 1964 Agreement] clearly provides that the rule applicable to payment for work performed on a holiday is applicable on an employee's birthday. The record reflects that Claimant was compensated for work performed on the holiday in accordance with the rules and practices applicable on this property. Therefore, it is difficult to determine the reasoning on which your local office decided that only that part of the rule dealing with the payment of 8 hours' pay at pro rata rate was applicable on Claimant's birthday.

It is my position that the rule required exactly the same compensation for work performed by Claimant on his birthday as was allowed him for working on the holiday."

The agreements which are pertinent herein are by reference made a part of the record in this dispute.

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 compensation due 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, 15585 (House); 15520 (Woody); 15563, 15949 (Lynch); 15589, 15761 (Harr); 15891, 15942 (Heskett); 16035 (Ives); 15908, 16240 (McGovern).

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 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 26th day of June 1968.