

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Louisville & Nashville Railroad, that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to properly compensate K. A. Caperton, regularly assigned in "NB" Office, Radnor, Tenn. for work performed on February 22, 1965, his birthday-holiday, which was also Washington's Birthday, a national holiday.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate K. A. Caperton an additional eight (8) hours' pay at the time and one-half rate for work performed on February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: An agreement between the Louisville & Nashville Railroad Company, hereinafter referred to as Carrier, and its agents, telegraphers, telephoners, towermen, levermen, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective June 1, 1958, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The question presented by this dispute is the proper compensation to be paid to an employee who was required to work on his birthday-holiday, which is also a national holiday, namely, Washington's Birthday, one of the seven (7) national holidays covered by the terms of the parties' agreement.

The claim involved in the dispute came into being as reflected by the following exchanges of correspondence made between the parties during the handling of the claim on the property:

"LOUISVILLE & NASHVILLE RAILROAD COMPANY

Office of Assistant Superintendent

Radnor, Tenn.
March 3, 1965

Mr. K. A. Caperton:

Account February 22, 1965, being a holiday and your birthday, and your working this day, you will be paid as follows:

During this conference it was the position of the Organization that for working Washington's Birthday (Holiday), which fell on his regular assigned work day, Mr. Caperton was entitled and was paid compensation of:

8 hours at 1½ rate for working a holiday — 8 hours at pro rata rate in lieu of day off — Total of 20 hours at pro rata rate.

And, in accordance with provisions of Article II, paragraph (g) of Agreement dated November 20, 1964, Mr. Caperton was entitled to the same compensation for working his own birthday (Holiday) as for work performed on Washington's Birthday, making a total payment due for working both holidays concurrently of 40 hours at the pro rata rate.

It was further pointed out that the position of the Organization was also supported by the last sentence of paragraph (f) of the same Article which provides that the employee may, when his birthday falls upon another designated holiday, by giving notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday, and if this should be done he would also be entitled to penalty rate of pay for working each holiday, so why should the employee be penalized by working the two holidays concurrently.

No settlement was reached on this claim, therefore, this is to advise that the claim is being referred to President G. E. Leighty for further consideration.

Yours truly,

/s/ K. B. Lane"

This completed handling on the property.

OPINION OF BOARD: Monday, February 22, 1965, a legal holiday (Washington's Birthday), was also Claimant's birthday, on which he was required to work eight hours. Carrier paid him eight hours at the rate of time and one-half for working the holiday, plus eight hours at the pro rata rate as birthday pay and eight hours at the pro rata rate as holiday pay. The claim is for an additional eight hours at the time and one-half rate. 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 same issue as to the interpretation of Article II - Holidays, Sections 6(f) and (g) of the National Mediation Agreement of November 20, 1964, has been adjudicated in numerous prior Awards of this Board, including Awards 16491, 16453, 16240, 16035, 15949, 15942, 15891, 15761, 15520, 15585, 15451, and 14921.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.