

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to properly compensate B&B Carpenter Francis Huard for work performed on Sunday, July 24, 1966, which was his birthday holiday and a rest day. (System Docket No. 10587.)

(2) B&B Carpenter Francis Huard now be allowed ten (10) hours' pay at his time and one-half rate because of the violation referred to above.

EMPLOYES' STATEMENT OF FACTS: The claimant was employed as a regularly assigned B&B carpenter, with a work week extending from Monday through Friday of each week. Saturday and Sundays were assigned rest days. Sunday, July 24, 1966 was also the claimant's birthday.

On Sunday, July 24, 1966, the claimant was called to perform emergency work due to the derailment of a freight train. He worked continuously from 4:30 A. M. to 2:30 P. M. on said date.

Although the claimant was entitled to pay at his time and one-half rate for working on his birthday holiday and an additional payment at his time and one-half rate for working on an assigned rest day, the claimant received only one such payment. In addition to the compensation he received for working on Sunday, July 24, 1966, the claimant was allowed eight (8) hours of pro rata pay as birthday pay.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant, Francis Huard, held regular assignment as B&B Carpenter, with Saturday and Sunday rest days. On Sunday, July 24, 1966, he was called for emergency service and worked from 4:30 A. M. to 2:30 P. M. In addition to being one of his assigned rest days, that date was also his birthday. For that day he was paid eight hours at straight time rate for the birthday holiday, under Article II, Section 6, of the Mediation Agreement of November 20, 1964, and ten hours at the time and one-half rate, under Rule 26(a) of the schedule agreement.

Claim was instituted alleging that, in addition to the above payments, Mr. Huard was entitled to a payment of ten hours at the time and one-half rate account service performed on his birthday under Article II, Section 6 of the Mediation Agreement of November 20, 1964.

The claim was progressed through the usual channels up to and including the undersigned.

Copy of appeal from General Chairman Christensen to the undersigned is attached as Carrier's Exhibit A.

Copy of decision by the undersigned is attached as Carrier's Exhibit B.

Agreement dated September 1, 1949, between the parties is on file with this Board, as are copies of the Mediation Agreement of November 20, 1964. These agreements are, by reference, made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as a B&B carpenter with an assigned work week of Monday through Friday and rest days of Saturday and Sunday. Claimant was required to perform ten hours' work on Sunday, July 24, 1966, which was his Birthday holiday and also one of his regularly assigned rest days.

Claimant was paid eight hours at his pro-rata rate for his Birthday and ten hours at his time and one-half rate for the service performed. He seeks an additional ten hours' pay at this time and one-half rate.

The issue in this dispute is the same as those involved in several recent awards of this Board, which were all resolved in favor of the Organization. Awards 15440, 15764, 15875, 15892, 16101, 16153, 16291 and 16543. Accordingly, we will sustain this 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 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 18th day of October 1968.