

Award No. 16818
Docket No. CL-17462

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6401) that:

(a) The Carrier violated and established understanding and practice in existence over 40 years, of releasing employes in the Traffic Department on Election Day, without loss of pay, by requiring said employes to work on Tuesday, November 8, 1966, Election Day, without granting said employes another day off, or compensating them in accordance with the holiday rule at the punitive rate.

(b) The Claimants shall be granted another day leave in lieu thereof, or compensated 8 hours at the punitive rate for service performed on November 8, 1966.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes as representatives of the craft or class of employes in which claimants in this case hold positions on the Lehigh Valley Railroad, hereinafter referred to as the Brotherhood and the Carrier respectively. Employes in the Traffic Department had consistently without exception for over 40 years prior to November 8, 1966, been granted Election Day as a holiday, such understanding and practice had continued uninterrupted until the Carrier by unilateral and arbitrary action required claimants to work on Tuesday, November 8, 1966, without granting claimants another day in lieu thereof, or compensating them in according with the holiday rule at the punitive rate.

Submitted as employes' exhibits A through P are the following:

EXHIBIT A - Letter from M. L. Polin, Vice General Chairman to C. H. Wolfinger, Vice President and J. E. Musselwhite, Freight Traffic Manager dated November 28, 1966.

The Employes in the handling of this case on the property did not claim or contend that there existed a "stated understanding" or "parol situation. Nor did they produce and make part of the record of handling on the property evidence to substantiate their statement that ". . . this practice has, as a result thereof, become a basic right of the employes involved . . ." (Carrier's Exhibit A).

Carrier has shown there was no stated "understanding," "parol" situation or practice here involved and submits that in the absence of evidence by the Employes to that effect, no foundation has been established upon which to place the claim.

Release of the claimants on Election Day without loss of pay through the years on an irregular basis depending upon the condition of the work and requirements of the service, did not and does not constitute establishment of "a basic right of the employes involved" as claimed by the Employes (Carrier's Exhibit A).

While claimant employes were not given Election Day off in 1966, they were given time off as required by State Law for the purpose of voting.

Many awards have sustained the principle that evidence and proof are required to substantiate a claim, among them Third Division Awards 9552, 9788, 10246, and 10783.

In Award 10067, Third Division, with Referee Harold M. Weston, Brotherhood of Maintenance of Way Employes v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Opinion of the Board stated:

". . . The requirement of proof exists for the protection of both parties as well as the Board. Properly viewed, it is not unreasonable or burdensome. If a claim is sufficiently important to warrant this Board's consideration and critical facts are in dispute, it is certainly incumbent upon the claimant to produce sufficient evidence to support his version of the facts on which he relies. (Emphasis ours.)

The Employes have not met the requirement of producing sufficient evidence to support their version of the facts in this case and, therefore, have failed to properly substantiate their position.

Carrier directs attention to Carrier's Exhibit C which is the appeal dated January 26, 1967 by the General Chairman to the Chief of Personnel. Exhibit D, dated June 14, 1967, is the denial by the Chief of Personnel. The lapse of times does not constitute a violation of time limit because of the mutual understanding on this property that time limits are not applicable in the handling of cases between the Brotherhood of Railway and Steamship Clerks and the Chief of Personnel.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims are distinguishable from those presented in our sustaining Award No. 16817. There the claimed holiday was one authorized under a Rule. Here we are asked to determine whether or not Carrier, in allowing its employes a day off on Election Day over a period in excess of 40 years, has obligated itself to continue the practice ad infinitum.

There is nothing in the record to indicate that the practice was ever anything other than a gratuity extended by Carrier to its employes in order to encourage them to do their civic duty. There is no showing that it was the product of collective bargaining or in any way supported by consideration flowing to Carrier. And, unlike the situation in Award No. 16817, there is no supporting rule in the Agreement to which reference can be made.

We think the situation here is not unlike that in Award 13217, wherein the identical parties were involved. Regardless of how long a gratuity may have continued, we do not believe the Carrier thereby lost its right to withdraw such gratuity without being said to have violated an Agreement which makes no mention of the matter. For us to hold otherwise would discourage all Carriers from extending courtesies and gratuities to their employes.

There was no violation of the Agreement, and the claims will be denied.

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 19th day of December 1968.