

Award No. 17082
Docket No. TE-16486

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL
RAILROAD OF NEW ORLEANS**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, that:

1. Carrier violated the Agreement between the parties when it improperly compensated Towerman-Director L. A. Haber for March 18, 1965.

2. Carrier shall compensate Claimant Haber for eight (8) hours' pay at the applicable time and one-half rate for working on his rest day, eighth hours' pay at the time and one-half rate for working on his birthday, plus eight hours' pay at the applicable straight time rate as birthday allowance, less compensation already allowed, if any.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective May 15, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. L. A. Haber, hereinafter referred to as claimant, at the time of this dispute, was regularly assigned to the third shift towerman-director position at New Orleans, Louisiana, working 11:30 P. M. to 7:30 A. M., Friday through Tuesday, rest days Wednesday and Thursday. Claimant is regularly relieved on his Wednesday rest day by a regularly assigned relief towerman-director. Thursday of each week is not part of any assignment and is worked by an extra towerman-director when available and in all other cases by the claimant on an overtime basis.

Claimant worked his regular assignment on Tuesday, March 16, 1965 and observed his regular assigned rest day of Wednesday, March 17, 1965. Carrier required claimant to work on Thursday, March 18, 1965, which was his rest day and also his birthday.

Claimant has now been paid eight hours at time and one-half rate for working on his rest day. Claimant has also been paid eight hours at straight

The rules on which you rely do not support this claim and it should be withdrawn; otherwise, it is respectfully denied.

Very truly yours,

/s/ B. W. Smith
Director of Labor
Relations

cc: Mr. L. M. Ogilvie"

13. Carrier refused payment as requested because (1) claim is barred from consideration by reason of not being filed within 60 days of the date of the occurrence upon which it is based, and (2) proper compensation has already been made, and there is no merit in requesting an additional allowance of eight hours at the time and one-half rate.

14. Claim was progressed in the proper manner on the property, and has now been progressed to your Board.

OPINION OF BOARD: The Claimant was required to work on Thursday, March 18, 1965, a day which was both his birthday and a regularly assigned rest day. He promptly on March 18 submitted timeslips for eight hours' pro rata birthday-holiday pay, and eight hours' pay at the rate of time and one-half for services performed account of working his rest day. The Carrier paid these timeslips.

On May 27, 1965, the Claimant filed another timeslip claiming an additional eight hours' pay at the time and one-half rate for the work he performed on March 18, 1965. It is undisputed that this claim, which the Carrier has refused to pay, was presented to the Carrier more than 60 days from the date of the occurrence on which it is based.

The Claimant contends that he should be excused for his late filing of this claim because he was not furnished a copy of the November 20, 1964 National Agreement. This contention is without merit. The Claimant was aware of the birthday-holiday agreement because the record shows he promptly submitted a claim for eight hours' pro rata holiday pay for his birthday.

Accordingly, this claim must be dismissed for failure to present it to the Carrier within 60 days from the date of the occurrence on which it is based, as required by Article V, Section 1(a) of the August 21, 1954 National Agreement.

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

Claimant failed to file his claim within the time required and the claim is thereby barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.