



Award No. 17097

Docket No. CL-17292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6321) that:

1. Carrier violated the rules of the Clerks' Agreement at Mansfield, Ohio, when it refused to compensate employe F. E. Potter, Jr., eight (8) hours pro rata holiday pay for February 22, 1965 (Washington's Birthday).
2. Carrier shall now be required to compensate employe Potter one (1) day's pay at pro rata rate. (Claim 1603)

EMPLOYEES' STATEMENT OF FACTS: The position of Mail Handler at Mansfield, Ohio, was assigned hours 4 P.M. to 12 Midnight and an assigned work week Tuesday through Saturday inclusive, rest days Sunday and Monday, was regularly assigned to N. B. Buskirk.

On or about December 10, 1964, Mr. Buskirk requested a leave of absence to be effective December 15, 1964. Instead of waiting for the Carrier to approve the request, Mr. Buskirk did not report for work December 15, 1964. Finally, Superintendent Henderson granted the leave of absence, to be effective December 29, 1964 and expiring January 27, 1965. Mr. Buskirk requested an extension of his leave of absence which was denied on February 12, 1965, however, Buskirk did not return to work and his position was then advertised by Bulletin No. 109 dated March 2, 1965 (Employees Exhibit A) and awarded by Bulletin No. 109 dated March 8, 1965 to Fred E. Potter, Jr., effective March 8, 1965 (Employees Exhibit B).

During the period of December 15, 1964 to March 8, 1965 that Mr. Buskirk was absent, the position of mail handler was worked on a day to day basis by extra employe F. E. Potter, Jr., the Claimant in this case. Claimant Potter worked the mail handler's position, regularly assigned to Buskirk, in the status of an extra or unassigned employe until he was awarded the position by bulletin effective March 8, 1965. The award bulletin, (Employees' Exhibit B) shows Mr. Potter's former position as "extra mail handler-trucker".

February 22, 1965, Washington's Birthday, a legal holiday, fell on Monday. The Carrier refused to compensate extra employe F. E. Potter, Jr. eight (8) hours at pro rata rate for the Holiday.

Claim was filed on March 12, 1965 by the Local Chairman with Agent Blair (Employees' Exhibit C) who denied the claim on March 15, 1965. (Employees' Exhibit D) On March 16, 1965 the Local Chairman notified the Agent that his decision was not acceptable and would be appealed. (Employees' Exhibit E).

On March 16, 1965 the Division Chairman progressed the claim to Superintendent Henderson (Employees' Exhibit F) who denied the claim on April 14, 1965. (Employees' Exhibit G) On April 24, 1965 the Division Chairman notified Superintendent that his decision was not acceptable and would be appealed. (Employees Exhibit H)

On April 30, 1965 the General Chairman progressed the claim to Mr. F. Diegtel, VP-Labor Relations, the highest officer designated by the Carrier to handle labor disputes. (Employees' Exhibit I) Conference was held on February 1, 1967 at which time the parties were unable to resolve the dispute and on February 28, 1967, General Manager-Labor Relations R. A. Carroll denied the claim. (Employees Exhibit J) As the General Chairman did not agree with statements and Awards cited in Carrier's letter, he wrote Mr. Carroll on March 14, 1967, stating the Organization's position and citing Awards properly applicable in the instant case. (Employees Exhibit K) In Letter dated March 30, 1967, Mr. Carroll reaffirmed denial of the claim. (Employees' Exhibit L).

(Exhibits not reproduced.)

CARRIER' STATEMENT OF FACTS: As the senior extra employee, F. E. Potter, hereinafter referred to as claimant, was assigned to fill the vacant position of Mail Handler at Mansfield, Ohio, from December 15, 1964 through March 9, 1965, while N. B. Buskirk, the regular incumbent was absent. The Mail Handler's position is assigned to work from 4:00 P.M. to 12:00 Midnight, with Sunday and Monday designated as rest days.

Under date of March 12, 1965 (Carrier Exhibit A) claim was filed on behalf of claimant, by the Local Chairman for one day at the pro rata rate for Monday, February 22, 1965 (Washington's Birthday). As this date was one of the regularly assigned rest days of the Mail Handler's position, it was not a holiday as such under the agreement for the position and claim was denied under date of March 15, 1965. Claim was thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters where it was discussed in conference and denied with denial confirmed under date of February 28, 1967 (Carrier Exhibit B). Subsequent exchanges of correspondence are evidenced by Carrier's Exhibits "C" and "D".

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein is for eight hours pro rata holiday pay for Washington's Birthday, Monday, February 22, 1965.

The record shows that an hourly-rated position of Mail Handler at Mansfield, Ohio, with assigned hours 4:00 P.M. to 12:00 Midnight, assigned work week of Tuesday through Saturday, and with rest days Sundays and Mondays, was regularly assigned to N. B. Buskirk. Buskirk was absent from December 15, 1964, and his position was advertised by bulletin as a permanent vacancy on March 2, 1965, and assigned to Claimant by bulletin on March 8,

1965. During the entire period that Buskirk was absent from December 15, 1964, the position was filled by Claimant as an extra employe until he was regularly assigned thereto by bulletin on March 8, 1965.

This Board has consistently held that when an extra employe takes the assignment of a regular employe, he takes the work week and the rest days of that assignment. See Awards 6970, 6971, 6973, 13860, among others. We find, therefore, that the holiday involved herein did not fall on a work day of Claimant's work week, and under Rule 30-2, paragraph (b), the claim must 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.