



Award Number 17383

Docket Number CL-16578

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6082) that:

1. Carrier violated the Clerks' Agreement when it refused to properly compensate Mr. A. W. Garrett for service performed July 5, 1965.
2. Carrier shall now be required to compensate Mr. A. W. Garrett for 8 hours at the rate of time and one-half for service performed on July 5, 1965, in addition to any other allowance received.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. W. Garrett is the regular occupant of General Clerk position No. 1543 with assigned hours 5 A.M. to 1 P.M. and rest days Thursday and Friday.

On Monday July 5, 1965, Independence Day, one of the designated holidays covered by the rules and which was also Mr. Garrett's birthday, a holiday under the November 20, 1964 Agreement, claimant was required to work his position for which service he was compensated as follows:

8 hours at pro rata rate as birthday pay
8 hours at pro rata rate as holiday pay
8 hours at punitive rate for working.

It is the Employees' position that Mr. Garrett should have been allowed payment as follows:

8 hours at pro rata rate as birthday pay
8 hours at time and one-half for working on birthday
8 hours at pro rata rate as holiday pay
8 hours at time and one-half rate for working on holiday.

Claim was handled in the usual manner up to and including the highest designated officer of the Carrier. Employees' Exhibits Nos. 1 thru 7.

(Exhibits Not Reproduced)

pyramiding or compounding two or more penalties to the same situation. It follows that the payment of either excludes the other, thus the rules are mutually exclusive.

In view of these facts, claims are without merit and are respectfully declined.

Yours truly,

/s/ B. W. Smith"

11. Carrier refused payment as requested because the 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.

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

(Exhibits Not Reproduced)

OPINION OF BOARD: The Fourth of July, 1965 was a Sunday. By agreement of the parties when this occurred the holiday was observed on the following Monday, July 5, which was Claimant's birthday. He worked on July 5 and was paid eight hours at pro rata rate as birthday pay, eight hours at pro rata rate as holiday pay and eight hours at punitive rate for working. The Claim is for an additional eight hours' pay at time and one-half for Claimant having worked on his birthday, the Carrier having stated in its denial of the claim that the eight hour payment at the punitive rate was for the legal holiday.

Petitioner cites Rules 43—Notified or Called, and 47—Sunday Work-Holiday Work, also the Agreement of November 20, 1964, Article II—Holidays, in support of the Claim. The provisions of the Agreements persuade that Claimant's entitlements for working a legal holiday were eight hours at pro rata rate plus eight hours at time and one-half for working that day, and eight hours' pro rata pay for his birthday. He did not elect another day to be observed in lieu of his birthday as prescribed in Article II, Section 6(f) of the Mediation Agreement of November 20, 1964. (See Award 14921 (Zumas)).

The Claim is therefore 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 Employees involved in this dispute are respectively Carrier and Employees 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 1st day of August 1969.