



Award Number 17547

Docket Number CL-17890

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6472) that:

- (a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when it failed and refused to allow Mr. R. J. Medina eight hours' additional compensation at the time and one-half rate for service performed on his birthday holiday and,
- (b) The Southern Pacific Company shall now be required to allow Mr. R. J. Medina eight hours' additional compensation at the time and one-half rate of Position No. 164, Disposition Clerk, rate \$24.8770 per day, April 15, 1967.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Prior to the time this dispute arose, Mr. R. J. Medina, hereinafter referred to as the Claimant, was assigned to Position No. 164, Disposition Clerk, rest days Saturday and Sunday.

On Wednesday, April 12, 1967, Mr. P. N. Garrette, Terminal Agent, notified Claimant that:

"Effective Saturday, April 15, 1967, assigned rest days on Position 164 will be Sunday and Monday instead of Saturday and Sunday. You will protect Position 164 on Saturday, April 15, and then Sunday and Monday, April 16 and 17, will be your rest days."

Claimant performed service on April 15 (his birthday holiday) as directed and was told that for such service he would be compensated eight hours at pro rata rate for his birthday and eight hours at time and one half for work on the sixth day of his work week.

Article II, Section 6, of the Mediation Agreement dated November 20, 1964, quoted later in this submission. For date of April 15, 1967, Claimant was compensated 8 hours at the pro rata rate for his "birthday holiday," plus 8 hours at the time and one-half rate, of Position No. 164 for service performed. Claimant did not perform any service on assigned rest days Sunday, April 16, and Monday, April 17, 1967.

Petitioner's representatives progressed the instant claim on the property in the usual manner up to and including Carrier's Assistant Manager of Personnel, the highest officer designated by Carrier to handle disputes of this nature, for 8 hours' additional compensation at the time and one-half rate of Position No. 164 for April 15, 1967, in behalf of Claimant, alleging violation of Rule 21 of the current agreement and the Agreement of August 21, 1954, as amended by the Agreements of August 19, 1960 and November 20, 1964. Copies of correspondence exchanged in that handling are attached as Carrier's Exhibits "B" through "F."

Applicable time limit for handling the within claim on the property was extended by agreement between the parties here involved, and Carrier's Assistant Manager of Personnel denied the claim by letter dated February 19, 1968 (Carrier's Exhibit "G"), informing Petitioner's General Chairman that Claimant had been properly compensated at time and one-half rate for service performed on his "sixth day," Saturday, April 15, 1967, in accordance with Rule 20(c) of the current agreement.

The remaining correspondence exchanged between Carrier's Assistant Manager of Personnel and Petitioner's General Chairman is attached as Carrier's Exhibits "H" and "I."

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant occupied the position of Disposition Clerk, assigned Monday through Friday, with rest days Saturday and Sunday.

On Wednesday, April 12, 1967, Carrier notified him that, effective Saturday, April 15, the rest days of his position were being changed to Sunday and Monday and, therefore, he would be required to protect his assignment on Saturday, April 15, his earned rest day which was, coincidentally, his birthday holiday.

Accordingly, Claimant worked his position on Saturday, April 15, in accordance with instructions. Carrier compensated him for eight hours at the rate of time and one-half for working what Carrier says was his "sixth day" (but which for all intents and purposes was his earned rest day of his old assignment), and further compensated him eight hours at the straight time rate for his birthday holiday, to which he was entitled pursuant to the terms of the November 20, 1964 Agreement regardless of whether or not he performed service on his birthday holiday.

Claimant seeks an additional eight (8)-hour payment at the time and one-half rate for having been required to work on his birthday holiday.

The overwhelming majority of decisions on this issue compels a sustaining award. Awards 15440 (Engelstein), 15764 (Harr), 15875 (Miller), 15892 (Heskett), 16101 (House), 16153 (Ives), 16291 (Goodman), 16543 (Devine), 16673 (McGovern), 16846 (Dorsey), 16857 (McGovern), 17050 (Cartwright).

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

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