

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY SIGNALMEN**

**ERIE LACKAWANNA RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company:

On behalf of Signal Maintainer P. R. Burke, Grove Street, Hoboken, New Jersey, for eight (8) hours at the time and one-half rate, account Carrier's refusal to permit him to work his regular assignment on June 1, 1967, his birthday holiday. (Carrier's File: Sig. Item 153.)

**EMPLOYEES' STATEMENT OF FACTS:** Claimant P. R. Burke is a regularly assigned Signal Maintainer at Grove Street, Hoboken, New Jersey with a regular work week of Monday through Friday from 2:30 P.M. to 10:30 P.M.

On Thursday, June 1, 1967, Claimant Burke was required to be absent from his position because it was his birthday. Carrier used assistant signal maintainer, A. A. Domanski to fill the position of the Claimant. (Brotherhood's Exhibit No. 11.)

Under date of July 19, 1967, the Brotherhood's Local Chairman filed claim on behalf of Mr. Burke for eight (8) hours at the time and one-half rate, on the basis the work would have been performed by him had he worked.

The claim was subsequently handled in the usual and proper manner on the property, up to and including the highest office of the Carrier designated to handle such disputes, without obtaining a satisfactory settlement.

Pertinent exchange of correspondence has been reproduced and attached, identified as Brotherhood's Exhibit Nos. 1 through 12.

There is an Agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Signal Gang No. 2 on Carrier's New York Division consists of a Leading Maintainer, Maintainer and Assistant

I find that there was no violation of the rules of the Agreement and claim is hereby denied."

was timely rejected and appealed to the Chief Signal Engineer (Carrier's Exhibit C) on July 27, 1967, at which time Petitioner for the first time alleged that the Assistant Maintainer performed regular maintenance work of "investigating track circuit trouble and other duties assigned to the maintainer, for which he was paid the assistant rate of pay." The Chief Signal Engineer denied the allegations and claim on September 21, 1967 (Carrier's Exhibit D), and on November 2, 1967, the claim was appealed to the Chief Engineer (Carrier's Exhibit E) who denied same on December 18, 1967 (Carrier's Exhibit F). Claim was then appealed to this office on January 27, 1968 (Carrier's Exhibit G), and denial in conference on March 7, 1968, was confirmed by letter dated March 15, 1968 (Carrier's Exhibit H).

On November 25, 1968, or 18 days before the Organization filed notice of intent with this Board, Petitioner wrote and furnished a statement from the Assistant Maintainer allegedly supporting that he performed exclusive maintainer's work on date of claim. (Carrier's Exhibit I-1 and 2.)

(Exhibits not reproduced.)

**OPINION OF BOARD:** The second shift of Signal Gang No. 2 at Grove Street Interlocking, with hours from 2:30 P. M. to 10:30 P. M., consisted of a Signal Maintainer and an Assistant Signal Maintainer. Claimant held the regular assignment of Signal Maintainer.

Claimant's birthday was June 1, 1967. He was timely informed by Carrier that he would not be required to work on his birthday. See, Article II, Section 6, of the National Birthday-Holiday Agreement of November 20, 1964.

It is firmly established by the case law of this Board that the primary objective of the Birthday-Holiday Agreement is to afford an employee covered by its terms with enjoyment of a day off on his birthday without diminution of wages; however, if work exclusively performed by the employee's position remains and is required to be performed on such holiday the right to the work is vested in the regularly assigned employee with penalty compensation as contractually prescribed. See, Article II, Section 6 (a) and (g), of the Birthday-Holiday Agreement.

The claim is predicated on an allegation that the Assistant Signal Maintainer performed work reserved to the Signal Maintainer on the latter's birthday in violation of the Agreement. It prays that Claimant be made whole by requiring Carrier to pay him time and one-half rate for eight (8) hours — the penalty rate which he would have received had he worked in addition to the eight (8) hours holiday pay he did receive at pro rata rate.

The record contains no evidence of probative value that work exclusively reserved to Claimant's Signal Maintainer was performed on his Birthday-Holiday. The burden of proof was vested in Petitioner. It failed to satisfy its burden. We, therefore, are compelled to dismiss the Claim for lack of proof.

**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;