



Award No. 18637
Docket No. SG-19016

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Jacksonville Terminal Company on behalf of:

Mr. H. C. Williams, account of violation of the Brotherhood of Railroad Signalmen's Agreement when he was required to lay off and not allowed to work on his regular seven-day assignment on his birthday, Wednesday, April 23, 1969. This claim is made for time and one-half of pay for Wednesday, April 23, 1969, which is in addition to the straight-time he received.

EMPLOYES' STATEMENT OF FACTS: For at least fifty years, Carrier maintained signal maintenance assignments around the clock, i.e., twenty-four hours per day, seven days per week. These positions, referred to herein at times as "clock" or "trick" positions have been filled on all holidays, with the incumbents receiving the time and one-half rate of pay for such holiday work.

Leading Signal Maintainer H. C. Williams, the Claimant in this dispute and an employe with fifty years of service on this Carrier, is part of this maintenance force. His work week is Monday through Friday, 8:00 A. M. to 4:00 P. M.

On Wednesday, April 23, 1969, Claimant's birthday (a holiday) and also one of his regular work days, Carrier did not permit him to work. Instead, other signal maintenance employes absorbed his work. For that day Carrier allowed him eight hours holiday pay. He now seeks an additional eight hours pay at the time and one-half rate on the basis he was not permitted to work in accordance with a fifty-year practice.

Claim for the additional eight hours' pay was initiated by the General Chairman under date of May 19, 1969. It was subsequently handled to a conclusion on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of correspondence is attached hereto as Brotherhood's Exhibit Nos. 1 through 13.

There is an agreement in effect between the parties to this dispute bearing an effective date of April 1, 1948 which, as amended, is by reference thereto made a part of the record herein. Amendments to that agreement include the August 21, 1954 National Agreement; the August 19, 1960 National Agreement; the November 20, 1964 Mediation Agreement Cases A-7127 and A-7128; and Mediation Agreement Case A-8433 dated April 21, 1969. A pertinent part of the latter reads, in part: "Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on a holiday are not changed hereby * * *"

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Jacksonville Terminal Company will hereinafter be referred to as "Carrier" and the Brotherhood of Railroad Signalmen will hereinafter be referred to as the "Organization." Carrier and the Organization are parties to Printed Agreement of April 1, 1948, Forty-Hour Work Week Agreement, effective September 1, 1949, and National Agreement of August 21, 1954. These agreements are on file with your Board and, by reference, are made part of Carrier's submission.

Mr. H. C. Williams, Claimant, is a regularly assigned Leading Signal Maintainer, with hours 8:00 A. M. to 4:00 P. M., Monday through Friday. April 23 is Mr. Williams's birthday and, as provided in Article II of the November 20, 1964 National Agreement, that day is a holiday for Mr. Williams. This Article specifies that effective with the calendar year 1965 each hourly, daily and weekly rated employe shall receive one additional day off with pay, or an additional day's pay, on each employe's birthday. Based on its operational needs, Carrier determined that it could manage without Mr. William's services on April 23, 1969 and, in line with the November 20, 1964 Agreement, he was given the day off with eight hours' pro rata pay.

On May 19, 1969, the Organization filed claim in behalf of Mr. Williams for eight additional hours at the time and one-half rate because he was not permitted to work on his birthday. Carrier declined the claim and it was appealed by the Organization up to and including the President & General Manager, highest designated Carrier officer for handling such matters. Handling of this claim on Carrier's property was in conformity with agreement provisions and is not in dispute (see Carrier's Exhibits "A" through "Q-6").

(Exhibits not reproduced.)

OPINION OF BOARD: At the time the claim arose Claimant was a regularly assigned leading signal maintainer, with hours 8:00 A. M. to 4:00 P. M., Monday through Friday. April 23, 1969, was Claimant's birthday. For that day he was allowed eight hours' holiday pay, and was given the day off. The Petitioner contends that other signal maintenance employees absorbed his work, and that he should have been permitted to work on his birthday in accordance with a practice of long standing. The Petitioner relies primarily upon the provisions of Article II, Section 6(g) of the Mediation Agreement of November 20, 1964, and the April 21, 1969 Mediation Agreement. It also cites Memorandum of Agreement of June 9, 1955 concerning the working of certain positions on Armistice Day.

The Carrier contends that there is no agreement which requires it to work an employe on a holiday, including his birthday holiday, and in the

absence of such contractual requirement, it may exercise its prerogative to blank a position on a holiday.

In recent Award 18117 (Dorsey) this Board held:

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

Also in Awards 15731, 15732 (Ives) it was held:

"Article II of the National Agreement of November 20, 1964, was not designed to compel Carrier to work employes on birthday-holidays, and Petitioner has failed to prove that Carrier is required to do so under existing rules and practices. Awards 8539, 10166, 11079, 15014 and 15060."

Based on the principles enunciated in the foregoing Awards, we find that Carrier did not violate the Agreement in blanking Claimant's position on his birthday holiday. There is no showing that other signal maintainers performed work exclusively reserved to Claimant, or work that they could not be required to perform as part of their regular assignments. The force was not augmented on the date involved. See Awards 18253, 17673, 17513, 17428 and 17057.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.

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