

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL No. 5858) that:

(1) The Carrier violated the Clerks' Agreement on February 22, 1965, when they failed to properly compensate Mr. G. W. Murray.

(2) That Mr. G. W. Murray now be compensated eight (8) hours at the time and one-half rate for February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. W. Murray is a regularly assigned Mail and Baggage Handler at the Texarkana Union Station Trust, Texarkana. He is assigned to work Friday through Tuesday, Wednesday and Thursday rest days, rate \$19.52 per eight hours.

On Monday, February 22, 1965, a regular work day, Mr. Murray performed eight hours work for which he was paid eight (8) hours at the time and one-half rate, plus eight (8) hours straight time rate which properly compensated him for the legal holiday under Rule 33(b), Washington's Birthday.

This same date, February 22nd, is Mr. Murray's birthday and is a holiday in accordance with the November 20, 1964 Agreement, under Article II, Section 6 (a). For working his birthday holiday the Carrier has paid Mr. Murray eight (8) hours at the straight time rate in addition to the pay shown above, but refuses to allow him an additional payment of eight (8) hours at the time and one-half rate for working his birthday holiday.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is an Agreement between the parties here in dispute effective May 1, 1965, which is on file with your Board and by reference herein is made a part of Carrier's Ex Parte Submission. The aforementioned Agreement has incorporated in it Article II — Holidays, of the National Agreement of November 20, 1964. The provisions of Article II — Holidays, of the August 21, 1954 Agreement, and Article III — Holidays, of the August 19, 1960 Agreement have also been incorporated in the basic Agreement between the parties of this dispute.

(b) 8 hours at the pro rata rate as holiday pay for his birthday under provisions of first paragraph of Section 6, Article II of the November 20, 1964 Agreement.

(c) 8 hours at the time and one-half rate for work performed on a holiday as provided in Rule 33 (b) of the basic Agreement previously quoted in the record.

The Claimant actually received the equivalent of 3½ days' pay for February 22, 1965. The payment for the work performed was made on the basis of existing rules and practices that have been in effect for many years on this property and the rules and practices were not changed by Article II, Section 6 (g) of the November 20, 1964 Agreement.

9. Under date of March 27, 1965, the Division Chairman for the Organization initiated a claim on behalf of the Claimant for an additional eight hours compensation at the time and one-half rate. The Division Chairman took the position that the provisions of Article II, Section 6 (g) of the November 20, 1964 Agreement provided for additional payment of time and one-half for work performed on the employee's birthday. In denying the claim, the Trainmaster advised the Division Chairman that Claimant had not exercised his option to observe another day as his birthday holiday and had been paid the time and one-half rate under the rules applicable to holidays.

10. In appealing the decision, the General Chairman took the position that February 22 was actually two holidays and that Claimant was entitled to an additional payment of eight hours at the time and one-half rate which amounts to eight hours at triple time for work performed by the Claimant. In denying the claim, the General Chairman was advised:

(a) The rule does not provide for duplicate payments in excess of time and one-half rate for work performed on a holiday.

(b) February 22 was A HOLIDAY, and the fact that the Claimant's birthday and Washington's Birthday occurred on the same day does not support a claim that is made for triple rate when such a day is worked.

(c) Practice and rule limits the payment for work on a holiday to the time and one-half rate multiplied by the number of hours actually worked, which in the instant case was the overtime hourly rate multiplied by eight hours worked.

(d) Claimant had not exercised his option to observe February 23 as his birthday holiday. There is no dispute on this question.

11. The dispute was handled in the normal manner on the property and is properly before your Board for a decision.

OPINION OF BOARD: Claimant, through the Organization, alleges that Carrier violated the Clerks' Agreement when it failed and refused to properly compensate him for having worked on February 22, 1965.

That day was not only George Washington's Birthday (a legal-holiday), but Claimant's birthday as well (a birthday-holiday).

The question presented in this dispute is identical with that decided in Award 14921.

In that award the Board held that under the provisions of the November 20, 1964 National Agreement, Claimant was not entitled to recovery.

There is nothing in the instant case warranting a different conclusion.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.

LABOR MEMBER'S DISSENT TO AWARD 14922, DOCKET CL-15807

My dissent to Award 14921, Docket CL-15793 is herewith adopted as my dissent to Award 14922, Docket CL-15807.

D. E. Watkins
Labor Member
11-30-66