



Award No. 15401

Docket No. MW-16009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to properly compensate Crossing Watchman F. Lambros for work performed on Friday, January 1, 1965, his birthday holiday which was also the New Year's Day holiday. (System Case No. MW-188.)

(2) Crossing Watchman F. Lambros now be allowed an additional eight (8) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was a regularly assigned crossing watchman at Portland, Oregon.

On Friday, January 1, 1965, which was one of the claimant's assigned work days, his birthday and one of the seven designated holidays (New Year's Day), the claimant was required by the Carrier to perform eight (8) hours of work on his regular assignment, for which he was compensated at his time and one-half rate. Even though he was entitled to eight (8) hours' pay at his time and one-half rate for the service performed on January 1, 1965 under Rule 35(a) and also under Section 6 of Article II of the November 20, 1964 Agreement, the Carrier failed and refused to allow him an additional eight (8) hours' pay at his time and one-half rate.

In addition to the compensation he received for working on Friday, January 1, 1965, the claimant was allowed eight (8) hours of pro-rata pay as holiday pay and also eight (8) hours' pay at his straight time rate as birthday pay.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated June 1, 1956, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: F. Lambros is assigned to position of crossing watchman at Portland, Oregon, working from 6:30 A. M. to 2:30 P. M., Monday through Friday.

January 1, 1965 occurred on a Friday, which day was within Mr. Lambros' assigned work week.

Mr. Lambros' birthday occurred on January 1, 1965.

On January 1, 1965, Mr. Lambros performed eight hours' service as a crossing watchman.

Mr. Lambros was allowed payment of eight hours at straight time rate on January 1, 1965 pursuant to Article II, Section 1, of the August 21, 1954 Agreement between the Three Territorial Carriers' Conference Committees and the Fifteen Cooperating Railway Labor Organizations, as amended by Article III of the August 19, 1960 Agreement between the Three Territorial Carriers' Conference Committees and the Eleven Cooperating Railway Labor Organizations.

Mr. Lambros was also allowed payment of an additional eight hours at straight time rate on January 1, 1965, pursuant to Article II of the November 20, 1964 Mediation Agreement between the Three Territorial Carriers' Conference Committees and the Four Cooperating Labor Organizations.

Mr. Lambros was also allowed payment of eight hours at time and one-half rate on January 1, 1965, pursuant to Article II, Section 6 (g) of that same November 20, 1964 Mediation Agreement and Rules 35 (a) and 33 (a) of the June 1, 1956 Agreement between Respondent and Petitioner.

Claim has been presented in behalf of Mr. Lambros for payment of an additional eight hours at time and one-half rate for the same tour of duty performed on January 1, 1965 for which he has already been paid two days at pro-rata rate and one day at time and one-half rate, or a total of 28 straight time hours.

OPINION OF BOARD: Fridays were one of Claimant's assigned work days; Friday, January 1, 1965, was also one of the holidays (New Year's Day) designated in Article II, Section 1 of the Agreement; and, since it was Claimant's birthday (he did not, as was his option under Section 6 of Article II, elect to have a different day considered his birthday), it was also a day for which, under Article II, Section 6, he was entitled to be paid without working, or, if he worked, for which he was entitled in addition to be paid for the work under the existing rules and practices governing payment for work on holidays. Claimant worked eight hours on that day. Carrier paid him eight hours at his straight time rate for the New Year's Day holiday, eight hours at his straight time rate for his birthday day-off pay and eight hours at time and one-half for his eight hours' work on that day.

Employees claim that he was entitled to be paid eight hours at the time and one half rate twice for the eight hours worked — once for work on the New Year's Day Holiday, under Rule 35(a), and once for work on his birthday day off, under Article II, Section 6(g).

Carrier contends that, although Claimant had the option to do so, he did not choose to select a date other than the New Year's Day holiday for his birthday day off, and that the single time and one half payment for the work performed on that date was the proper compensation for the work under the Agreement.

A number of disputes involving the same issue as here have reached this Board. We decided the first of these in Award 14921 on November 4, 1966, and have since followed with others decided the same way. We find no reason to decide the issue differently in this case.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1967