



Award No. 15520

Docket No. MW-16087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM:

(1) The Carrier violated the Agreement when it failed and refused to properly compensate Crossingman Milton E. Kyttle for work performed on Friday, January 1, 1965, his birthday holiday. (Railroad Docket 9925.)

(2) Crossingman Milton E. Kyttle now be allowed 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 regularly assigned as crossing watchman at State Street Crossing No. 50.75, New London, Connecticut.

On Friday, January 1, 1965, which was one of the claimant's assigned work days, his birthday and one of the designated holidays (New Year's Day), the claimant was required by the Carrier to perform eight (8) hours of work on his regular assignment. He was allowed eight (8) hours' pay at his time and one-half rate under the provisions of Section (A) of Rule 24 for service on the New Year's Day holiday. However, the Carrier failed and refused to allow him eight (8) hours' pay at his time and one-half rate under the provisions of Article II, Section 6, paragraph (g) of the November 20, 1964 Agreement for work performed on his birthday.

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 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 September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The claimant, Milton E. Kytte, held regular assignment as Crossing Watchman at State Street Crossing, New London, Connecticut, with rest days Wednesday and Thursday, January 1, 1965, was a legal holiday in accordance with the provisions of Rule 24 (A) of the Maintenance of Way Employees' Agreement. January 1, 1965, was also Mr. Kytte's birthday holiday covered by the provisions of the Agreement of November 20, 1964. January 1, 1965, fell on a Friday and was one of the claimant's regular assigned work days. For service rendered on January 1, 1965, Mr. Kytte was compensated eight hours pro rata for the New Year's Holiday; eight hours pro rata for his birthday holiday, and eight hours at punitive rate for service performed on that day.

Under date of February 5, 1965, claim was instituted by Mr. Kytte for payment of eight hours at punitive rate for service rendered on his birthday holiday. The claim was progressed through the prescribed channels on the property up to and including the undersigned.

Article II, Section 6 (f), of the Agreement dated November 20, 1964, provides that:

"... If an employee's birthday falls on one of the seven holidays named in Article III of the Agreement of August 19, 1960, he may, by giving reasonable notice to his supervisor, have the following day or the day immediately preceding the first day during which he is not scheduled to work following such holiday considered as his birthday for the purposes of this Section."

As the claimant made no selection of either of the days provided by Article II, Section 6 (f), quoted above, his claim was denied.

Copy of the agreement and all supplements thereto between the parties are on file with the Board and are, by reference, made a part of this record.

OPINION OF BOARD: This dispute concerns payment due Claimant for service performed on a legal holiday, which was also his birthday. Claimant did not elect to have another day considered as his birthday, which was his right under Section 6(f), Article II of the November 20, 1964 Agreement.

The Board has previously dealt with and discussed the question of payment for work performed on a day which was, as here, both a birthday and legal holiday. See Awards 14921, 14922 (Zumas), 15013, 15388, 15451 (Dorsey); and 15401 (House).

We will follow the reasoning of those awards and deny the claim.

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 21st day of April 1967.