

**Award No. 15892
Docket No. CL-16211**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5943) that:

1. The Carrier violated the agreement between the parties when it failed to properly compensate Randall Gordon, Yard Clerk, Superior, Wisconsin, for work performed on September 11, 1965, his birthday and his assigned rest day.
2. The Carrier shall now be required to compensate half rate for September 11, 1965, in addition to the amount already received.

EMPLOYES' STATEMENT OF FACTS: Claimant is a Yard Clerk at Superior, Wisconsin, seniority date, June 6, 1941, who has an assigned work week of Monday through Friday, with Saturday and Sunday as rest days. Saturday, September 11, 1965, was his birthday and one of his rest days. He was required to work on this date for which he was paid as follows: Eight hours at the pro rata rate for his birthday; eight hours at the time and one-half rate for services performed on his birthday; a total of 20 hours.

The employes contend he should have been compensated as follows: Eight hours at the pro rata rate for his birthday; eight hours at the time and one-half rate for working his birthday; eight hours at the time and one-half rate for working his rest day; a total of 32 hours.

The dispute between the Employes and the management, and the question before your Honorable Board, is: Is the claimant entitled to one additional day's pay at the time and one-half rate for working on his rest day? The carrier contends the employe is only entitled to one day's pay at the time and one-half rate for services performed on his birthday, September 11, 1965. The employes contend otherwise.

On September 22, 1965, Mr. M. V. Dailey, Supervisor, District Accounting Office, directed a letter to Mr. G. C. Nevers, Supervisor at Superior, Wisconsin, advising the time rolls for Randall Gordon were reduced by eight hours at the punitive rate for his services on September 11, 1965. (Employes' Exhibit

However, because of vague assertions made in conference and also because of its position in a similar case pending before the Third Division, Docket CL-15962, it appears that the basis of the Organization's claim is that the claimant is entitled to duplicate payments when there are separate rules which provide for the punitive rate for working on a rest day which also happens to be the employee's birthday.

The position of the Carrier throughout the handling of this case on the property was that payment of 8 hours at the time-and-one-half rate satisfies the requirements of all rates of pay rules; that nothing in the agreement indicates that the triple-time rate or duplicate payment under each rule should be made for working once, and that the claimant was paid in accordance with many years of past practice. The General Chairman has been furnished evidence of this practice in connection with the case referred to above, Third Division Docket No. CL-15962 (Carrier's Exhibit C-1).

The correspondence of the parties is attached as Carrier's Exhibit C-2.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue in this case is whether or not an employee who relieves on his assigned rest day, which is also his birthday, is entitled to overtime payment under both schedule Rules 36 E and 42 B, as amended by Article II, Section 6(g) of the November, 1964 Agreement.

The issue has been before us several times and resolved in favor of the Organization. Awards 15398 (House), 15440 (Engelstein), 15764 (Harr) and 15875 (Miller). While there has been one denial award, same being Award 15564 (Lynch), the earlier cited sustaining awards are not palpably wrong and are clearly the weight of authority. Therefore, we shall follow said authorities and hold that the Agreement was violated.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1967.

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