

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6030) that:

(1) The carrier violated the current agreement between the parties effective January 1, 1962 and Article II-Holidays of the National Agreement of November 20, 1964, when it failed and/or refused to properly compensate Clerk R. J. Rao, Houston, Texas, for work performed on April 21, 1965 (observed as a holiday in lieu of Washington's Birthday) which was also his birthday.

(2) The carrier be required to compensate R. J. Rao a day's pay at the time and one-half rate of the position he held on April 21, 1965, in addition to the wages he was paid for work performed on that date.

EMPLOYEES' STATEMENT OF FACTS: On April 21, 1965, R. J. Rao was assigned to Position No. 9193, Assistant Chief Clerk and Line Desk Clerk, Eureka Yards, Houston, Texas, a seven day position. His work week was Wednesday through Sunday, with rest days of Monday and Tuesday; thus Wednesday, April 21, was a work day of his work week. Exhibits 12 and 13. By agreement April 21 (San Jacinto Day) has been substituted as a holiday in lieu of February 22 (Washington's Birthday) at Houston. April 21 was Mr. Rao's birthday as well as being a holiday falling on a work day of his workweek. He qualified for holiday pay and birthday pay by working the work days immediately preceding and following April 21. Since the position held by Mr. Rao was a seven day position, and since under the rules the carrier could not lay him off and have the work on his position performed by another employe, and since he did not elect to substitute another day as his birthday holiday, he was instructed to work on April 21. He was allowed one pro rata day's pay as holiday pay and a time and one-half day for work performed on the holiday. Also, he was allowed one pro rata day's pay as Birthday pay, but was not allowed a time and one-half day for the work he performed on his birthday, as required by Rule 48 and Rule 54 as amended by Article II-Holidays of the Agree-

Carrier's Exhibit A, sheets 1 through 25 is a photocopy reproduction of all of the correspondence which passed between the parties to this dispute during the handling of this claim on the property.

The current working agreement between the Carrier and the Clerks' Organization, effective January 1, 1961, is on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns payment due Claimant for service performed on a 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.

This Board has previously dealt with and discussed the question of payment for work performed on a day which was, as here, both a birthday holiday and a legal holiday in Awards 14921, 14922, 15013, 15388, 15401, 15451, 15520, 15563, 15585, 15589 and 15761.

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 31st day of October 1967.