

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5949) that:

(1) The Carrier violated the agreement between the parties when it failed to properly compensate P. R. Hughes, Chief Clerk, Noyes, Minnesota, for work performed on May 31, 1965, which was his regular assigned work day, a legal holiday, and his birthday.

(2) The Carrier shall now be required to compensate P. R. Hughes for 8 hours at the time and one-half rate for May 31, 1965, in addition to the amount already received.

EMPLOYEES' STATEMENT OF FACTS: Claimant is the Chief Clerk in the Yard Office on the Great Northern Railway Company at Noyes, Minnesota. His seniority date is June 19, 1920. He holds a seven-day position with a work week of Sunday through Thursday, with Friday and Saturday as rest days.

On Monday, May 31, 1965, he worked a full eight hours on his assignment. This was a legal holiday under the agreement, and the claimant's birthday. For this date, he was paid 8 hours at the pro rata rate for his birthday; 8 hours at the pro rata rate for the legal holiday; and 8 hours at the time and one-half rate for working; a total of 28 hours.

It is the Employees' contention he should have been compensated as follows: 8 hours at the pro rata rate as birthday pay; 8 hours at the time and one-half rate for working on his birthday; 8 hours at the pro rata rate as holiday pay; and 8 hours at the time and one-half rate for working on the holiday; a total of 40 hours.

The Carrier contends it has satisfied the agreement by paying the employe one day's pay at the time and one-half rate for the services performed on May 31, 1965. The Employees contend that under the agreement, the Carrier is con-

"(f) * * * If an employe'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."

The claimant was paid the time-and-one-half rate for working on the May 31, 1965 holiday under Rule 42B of the current Schedule Agreement, which provides:

"RULE 42.

SUNDAY WORK - HOLIDAY WORK

* * * * *

B. Holiday Work. Work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday the day observed by the state, nation or by proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half."

The Organization contends that the claimant is entitled to a duplicate payment of time and one-half because May 31, 1965 was also his birthday even though Article II, Section 6(g) of the November 20, 1964 Agreement specifically treats pay for working on a birthday holiday the same as pay for working on any other holiday. Article II, Section 6(g) states:

"ARTICLE II. HOLIDAYS

* * * * *

Section 6:

* * * * *

(g) Existing rules and practices thereunder governing whether an employe works on a holiday and the payment for work performed on holidays shall apply on his birthday."

During the handling of this case on the property, the Organization has cited only Rule 42B as allegedly supporting their contention. The position of the Carrier throughout the handling of this case on the property was that there is no rule in the current Schedule Agreement which provides that the triple-time rate or duplicate payment should be made for working once on a holiday which happens to coincide with an employe's birthday. It was also pointed out that the claimant had made no election to observe his birthday on a different day as provided for in the third sentence of Article II, Section 6(f) of the November 20, 1964 Agreement, quoted above.

Correspondence of the parties has been attached as Carrier's Exhibit C-1.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant worked his regular position on a legal holiday, which was also his birthday. Claimant was paid eight hours at the pro rata rate as birthday pay, eight hours at the pro rata rate as holiday pay

and eight hours at the time and one-half rate for working on a holiday. This claim is for eight hours' pay at the time and one-half rate in addition to compensation already paid.

The same issue of the interpretation of Article II—Holidays, Sections 6(f) and (g) of the November 20, 1964, National Mediation Agreement has been before this Board in several recent dockets. It is clear that if an employe's birthday falls on a holiday he can elect to celebrate his birthday on another day as set out in Article II, Section 6(f).

We will deny the claim. See Awards 14921, 14922, 15013, 15388, 15401, 15451, 15520, 15563, 15585, 15589 and 15761.

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 Employes involved in this dispute are respectively Carrier and Employes 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 17th day of November 1967.