



Award No. 16153
Docket No. CL-16323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5974) that:

(1) The Carrier violated the terms of the currently effective Clerical Agreements between the parties, including the National Mediation Agreement dated November 20, 1964 when it refused and continues to refuse to properly compensate Mr. P. J. Miller, Tulsa, Oklahoma, for time worked on April 18, 1965, one of his regularly assigned rest days, which was also his birthday holiday.

(2) Carrier shall now be required to properly compensate Claimant Miller for an additional eight hours at the time and one-half rate of his regularly assigned position in the total amount of \$33.24, in addition to compensation paid for service performed April 18, 1965 already received.

EMPLOYEES' STATEMENT OF FACTS: On the claim date, Mr. Miller was regularly assigned to Bill Clerk Position No. 37, hours of assignment 3:59 P.M. to 11:59 P.M., with a work week of Tuesday through Saturday, rest days, Sunday and Monday. On Sunday, April 18, 1965, Claimant Miller was required to return to service by the Carrier on his first rest day, which was also his birthday, and was only compensated by Carrier at time and one-half for working his assigned rest day plus eight hours' pay at the pro rata rate for his birthday holiday, he actually being entitled under Agreement rules and the National Mediation Agreement of November 20, 1964 to an additional time and one-half for being required to work on his birthday holiday in addition to compensation already received.

These claims have been handled with Management up to and including the Director of Labor Relations, but not composed. See Employees' Exhibits 1(a) through 1(f) inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On the date of the occurrence in question, the claimant, P. J. Miller, was regularly assigned to Bill Clerk Position No. 37, rate \$22.16 per day, in the Carrier's Yard Office at Tulsa, Oklahoma. The claimant's assigned hours and work week assignment on the six-day position were 3:59 P.M. to 11:59 P.M., Tuesday through Saturday, with Sunday and Monday rest days. The position is filled on Monday by a regular relief employee, but Sunday is not included in a relief assignment. In the absence of an available extra employee, the claimant was entitled under the controlling Schedule Agreement to render service on his rest day, Sunday, April 18, 1965. The claimant was so used, but it so happened that Sunday, April 18, 1965 was also the claimant's birthday.

The claimant worked the hours of his regular work week assignment on Sunday, April 18, 1965. The compensation received by the claimant on this day was in the aggregate amount of 20 hours at the pro rata rate of pay of the position. The 20 pro rata hours represents eight hours for birthday-holiday pay and 12 hours for work performed. The 12 hours for work performed is the equivalent of eight hours at the time and one-half rate of pay.

The claim before this Division is that the claimant should have been compensated for an additional eight hours at time and one-half rate (12 hours at pro rata rate) because his birthday coincided with the service rendered by him on his rest day, April 18, 1965. See Carrier's Exhibits A and A-1, attached hereto.

The difference between compensation claimed less compensation allowed is \$33.24, and that is the claim before this Division.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as a Bill Clerk with an assigned work week of Tuesday through Saturday and rest days on Sunday and Monday. Claimant was required to work on Sunday, April 18, 1965, which also was his birthday.

Claimant was paid eight hours pro rata rate for his Birthday and eight hours at time and one-half for service performed. Claimant seeks an additional eight hours' pay at the time and one-half rate under the Agreement rules and the National Mediation Agreement of November 20, 1964.

The issues involved in this dispute are identical with those found in several recent Awards of this Board. Award Numbers 15892, 15875, 15764 and 15440. Accordingly, we will sustain 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1968.

CARRIER MEMBERS' DISSENT TO AWARD 16153,
DOCKET CL-16323

We dissent.

G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White