

Award No. 16491
Docket No. CL-16622

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6087) that:

(a) The Carrier violated the terms of the current Agreement when it failed to properly pay Mr. George E. Anderson for work performed on May 31, 1965, and

(b) Mr. George E. Anderson shall now be additionally paid for May 31, 1965, one day at time and one-half.

EMPLOYES' STATEMENT OF FACTS:

1. Claimant George E. Anderson was the incumbent of a position of Ticket Seller, hours 11:00 P. M. to 7:00 A. M., EST, relief days Tuesday and Wednesday, rate \$535.82 per month.

2. On May 31, 1965, which was Monday the day the Nation celebrated as Memorial Day and also Claimant's birthday, the Carrier required him to work eight hours. He was paid eight hours as time and one-half rate for service performed on the holiday and Carrier has refused to pay Claimant an additional eight-hour day at time and one-half rate for service performed on his birthday.

3. Claimant George E. Anderson filled out time card form WT-AO 202 requesting two days' pay at the rate of time and one-half account being required to work Monday, May 31, 1965, Memorial Day as celebrated Nationally which was also Mr. Anderson's birthday. This claim was never denied in any manner but upon receiving his pay check June 8, 1965, a shortage of \$36.81 was noted by Mr. Anderson and he filed at WT form "CLAIM FOR SHORTAGE OF PAY" which was returned to him noted "YOUR CHECK IS CORRECT." Under the date of June 23, 1965, a claim was filed with Ticket Agent A. J. Klein for this shortage of \$36.81 and was denied on July 16, 1965, and timely appealed to Carrier's highest officer designated to receive and consider such appeals. Conference was held August 26, 1965,

and Carrier denied the Claim by letter dated September 7, 1965. (Time limits for appeal by Brotherhood and Carrier's reply to our appeal was extended by Agreement.) (Time limits for presentation of this case to the Adjustment Board also were extended by Agreement.) Copies of all correspondence in connection with the claim are attached and identified as Employees' Exhibits A through E.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant is a ticket seller. He is monthly rated.

He was required to work on the date of claim, May 31, 1965, a day celebrated as a legal holiday. It was, ordinarily, a regular work day of his assignment. It was also his birthday.

Under the National Agreement providing for birthday-holiday pay (paragraph (f), Section 6, Article II, of the National "Nonops" Agreement of November 20, 1964), he had the option of celebrating his birthday, since it fell on a designated holiday, on another day. Claimant did not exercise that option.

Claimant, occupying a monthly rated position, received two 8-hour pro rata payments for the holiday and the birthday (by reasons of adjustments under the August 21, 1954 Agreement which, in part pertinent hereto, is incorporated into the Agreement between the parties hereto, effective August 1, 1958, as Rule 37(c), Section 2(a), and the November 20, 1964 Agreement respectively). He received, in addition, eight hours at the time and one-half rate for having worked on a holiday (under Rule 37(b) of the parties' Agreement).

Under date of June 23, 1965, the General Chairman filed claim in behalf of Claimant Anderson alleging he should be paid an additional day at the time and one-half rate for the service performed on May 31, 1965. Copy of General Chairman's claim is attached as Exhibit A. The Ticket Agent rendered decision dated July 16, 1965, denying the claim on the basis that Anderson was properly compensated for the service performed on May 31, 1965. Copy of Ticket Agent's decision is attached as Exhibit B. Under date of July 21, 1965, the General Chairman appealed the Ticket Agent's decision to the Manager. Copy of the General Chairman's letter of July 21, 1965, is attached as Exhibit C. Following conference on appeal, the claim was denied by the Manager. Copy of the Manager's decision is attached as Exhibit D.

(Exhibits not reproduced.)

OPINION OF BOARD: Monday, May 31, 1965, a legal holiday (Memorial Day) was also Claimant's birthday, on which he was required to work eight hours. Carrier paid him eight hours at the rate of time and one-half for service performed on the legal holiday. The claim before us is for an additional eight hours at the rate of time and one-half for service performed on his birthday.

The same issue as to the interpretation of Article II-Holidays, Section 6(f) and (g) of the National Mediation Agreement executed November 20, 1964, has been adjudicated by this Board in Awards 14921, 14922, 15013, 15388, 15401, 15451, 15520, 15563, 15585, 15589, 15761, 15891, 15908, 15942 and 15949, among others.

We will deny the instant 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 11th day of July 1968.