

Award No. 16786
Docket No. CL-16101

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5899) that:

(1) Carrier violated Article II, Section 6 (a) and (g) of the National Agreement of November 20, 1964 when they refused to allow Mr. DeWayne Rogerson, regularly assigned as Linen Checker in the Union Pacific Laundry at Ogden, Utah, an additional eight hours' compensation at the time and one-half rate of this position in accordance with the above Agreement.

(2) Carrier shall now compensate Mr. Rogerson eight hours' compensation at the time and one-half rate of the position of Linen Checker, current pro rata rate \$2.6088 per hour, for his Birthday Holiday, February 27, 1965.

EMPLOYEES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements, including the National Agreement of November 20, 1964, entered into by and between the Union Pacific Railroad Company, hereinafter referred to as Carrier, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter referred to as Employees. All such agreements are on file with this Division of the National Railroad Adjustment Board and, by reference, are made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner, through the highest Officer designated by the Carrier to handle such disputes, failed of adjustment and is now properly before your Board for adjudication.

The claimant, Mr. Rogerson, has an employment relation with the Carrier since December 20, 1945. On the date of this claim, Thursday, February 25, 1965, he was the owner of the only assigned position of Linen Checker in this Union Pacific Railroad Company's Ogden Laundry. The position has assigned working hours 7 A. M.-11:30 A. M., 12 Noon-3:30 P. M., with assigned rest days of Friday and Saturday each week. He was compensated for services

Bignall, by letter of April 28, 1965 (copy attached as Carrier's Exhibit G) advised the claim would be appealed.

By separate letter of April 28, 1965, (copy attached as Carrier's Exhibit H), General Chairman Bignall appealed the claim to Mr. A. D. Hanson then Carrier's Vice-President of Labor Relations. By letter of May 5, 1965, (copy attached as Carrier's Exhibit I), Mr. Hanson suggested that the claim be docketed for conference, and by letter of June 7, 1965, (Carrier's Exhibit J), General Chairman Bignall indicated he was agreeable. Conference was held on August 20, 1965, following which Mr. G. L. Farr, who had succeeded Mr. Hanson as Vice President-Labor Relations, again declined the claim in his letter of September 4, 1965 (copy attached as Carrier's Exhibit K). By letter of September 4, 1965 (copy attached as Carrier's Exhibit L), General Chairman Bignall advised that the claim would be processed to the Adjustment Board.

Article II, Section 6(a) of the National Agreement of November 20, 1964, upon which this claim is predicated, provides as follows:

"ARTICLE II. HOLIDAYS

Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employees covered by this Agreement, other than employees represented by the Hotel & Restaurant Employees and Bartenders International Union, is hereby further amended by the addition of the following Section 6:

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily and weekly rated employee shall receive one additional day off with pay, or an additional day's pay, on each such employee's birthday, as hereinafter provided.

(a) For regularly assigned employees, if an employee's birthday falls on a work day of the work week of the individual employee he shall be given the day off with pay; if an employee's birthday falls on other than a work day of the work week of the individual employee, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any."

(Exhibits not reproduced.)

OPINION OF BOARD: This Board is satisfied, as a preliminary matter, that the Third Division does not have jurisdiction under the Railway Labor Act, to consider the merits of this dispute. Under the provisions of that Act and their interpretations, the Third Division is proscribed from considering a dispute involving a "laundry worker," even though such term is included in the Scope Rule of the Agreement.

I.

While the record indicates that the question of jurisdiction was not raised on the property, such failure to object is irrelevant. Jurisdictional conditions are absolute under the Act, cannot be waived, and can always be considered at any time in the proceedings. See Awards 8886, 9578, and 10315.

II.

The Railway Labor Act provides, in part, as follows:

"Third division: To have jurisdiction over disputes involving station, tower and telegraph employes, train dispatchers, maintenance-of-way men, clerical employes, freight handlers, express, station, and store employes, signalmen, sleeping-car conductors, sleeping-car porters, and maids and dining-car employes. This division shall consist of ten members, five of whom shall be selected by the Carriers and five by the national labor organizations of employes.

Fourth division: To have jurisdiction over disputes involving employes of Carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employes of Carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the Carriers and three by the national labor organizations of the employes." (Emphasis ours.)

In Award 1697 this Board said:

"In exercising the powers granted to it by the Railway Labor Act this Board must act strictly in accord with the provisions of that statute which defines and limits the authority of each of the four divisions of the Board."

The Board is satisfied that under the wording of the Act quoted above, disputes concerning "laundry workers" must be considered by the Fourth Division of this Board. Award 13118. This is so even if, as in the instant dispute, the employe is included in the Scope Rule of the Agreement. Again we quote from Award 1697:

"It is true that she is an employe within the scope rule of the agreement. See Award 1442. But the parties cannot by agreement confer on this Division of the Board jurisdiction over a dispute not covered by the applicable provisions of the statute."

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 does not have jurisdiction over this dispute.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

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