

Award No. 16817
Docket No. CL-17461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6402) that:

(a) The Carrier violated the Rules Agreement as revised May 1, 1955, when on Friday afternoon, February 10, 1967, employees in the General Offices were personally contacted by an Official or Supervisory Officer of the Company, and verbally informed that Lincoln's Birthday, Monday, February 13, 1967, would be a regular work day, and that each employee would be expected to report for work on that date.

(b) Claimant employees who worked on such date shall be compensated a day's pay at the punitive rate, and employees required to change vacation or sick leave be allowed a day's pay at the pro-rata rate.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees as representatives of the craft or class of employees in which the claimants in this case hold positions on the Lehigh Valley Railroad — hereinafter referred to as the Brotherhood and the Carrier, respectively. It is a matter of record that the claimants in this case had for in excess of fifty (50) years prior to 1967, received Lincoln's Birthday as a holiday, and we particularly emphasize that whenever such holiday fell on a Sunday, the following Monday was the day recognized as the holiday. On every such occasion the Carrier by its action granted the employees the day off from work. This agreed to holiday was the result of various conferences and negotiated agreements, or memorandum of understanding or agreement entered into by first, The Lehigh Clerks Association and later, the Brotherhood with the Carrier, which followed its confirmation as a permanent holiday granted in lieu of a wage increase requested of the Carrier in 1927 by the Lehigh Clerks Association. Thus, the history of recognizing Lincoln's Birthday, as a legal holiday, and in particular Monday when it fell on Sunday, reaches back as far as the early 1900's, before any agreement existed between the Lehigh Valley Railroad Company and its clerical employees.

There is no stipulation in Rule 47 (d) for observation of Lincoln's Birthday on Monday when it falls on Sunday. Employes cannot and do not dispute that fact. Rule 47 (d) is clear and unambiguous and the Employes have not disputed that fact.

OPINION OF BOARD: This dispute is centered on interpretation of Rule 47 (entitled Sunday Work - Holiday Work) of the Agreement between the parties. Section (b) of the rule enumerates certain national holidays to which employes are entitled. Such section contains the further proviso that when one of the holidays falls on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday. Section (d) of Rule 47 provides for certain additional holidays, including Lincoln's Birthday. The provision covering the situation where Lincoln's Birthday falls on Sunday was not repeated in Section (d) pertaining to additional holidays, but the record indisputably shows that for 50 years the additional holidays were treated exactly as were the basic national holidays.

We think this was essentially a construction of the contract placed on it by the parties. In one section are enumerated holidays applying to all employes, such section providing for an alternate day in the event of coincidence of the holiday with Sunday. There follows a section providing for additional holidays for some employes. It is not unreasonable to assume that if the parties had intended to apply a different standard to the additional holidays they would have so stated. Certainly 50 years of practice in dealing with all holidays uniformly, when taken conjunctively with the two sections of Rule 47 would raise a strong presumption that the parties read the Sunday provision into Rule 47(d). The claims are sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1968.

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Serial No. 232

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

DOCKET NO. CL-17461

INTERPRETATION NO. 1 TO AWARD NO. 16817

NAME OF ORGANIZATION:

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

NAME OF CARRIER:

LEHIGH VALLEY RAILROAD COMPANY

Upon application of the representative of the employees involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (M) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made.

Carrier has misinterpreted our Award. Claimants worked on a holiday which we have ruled should be treated the same as the holidays enumerated in Rule 47 (b). Such being the case, Claimants were entitled to a day's pay at the pro rata rate for the holiday plus a day's pay at the punitive rate for working the holiday. Having been paid only one day at straight time, they are still due another day at time and one half.

However, Carrier has an alternative which applies to the additional holidays enumerated in Rule 47 (d). The note following such provision gives Carrier the option to award a substitute day off to the employees designated in Rule 47(d). Thus, for holidays under 47 (d) an employee may be required to work at straight time on such day provided he is given another day off with pay, or he may be required to work on the holiday without a substitute holiday selected by Carrier. In the latter event he is entitled to a day at pro rata rate for the holiday plus a day at premium pay for working.

Carrier interposes its right to award another holiday only after having made exhaustive efforts to abrogate a practice of 50 years standing. We have some inclination to hold that Carrier has waived such right. However, we believe justice in this particular case will be served by the following order:

Carrier shall compensate each Claimant as follows:

1. Pay an additional day's pay at the punitive rate together with interest at 7 1/2 percent per annum from February 16, 1969, or
2. Pay accrued interest at 7 1/2 percent per annum from February 16, 1969 on a day's pay at the penalty rate, and award Claimant a day off with

pay at the pro rata, said day to be taken on or before the date of compliance with this order.

Referee David H. Brown, who sat with the Division as a neutral member when Award No. 16817 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.