Award No. 16856
Docket No. TE-16227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Richmond, Fredericksburg and Potomac Railroad Company, that:

1. Carrier violated the Agreement between the parties when it failed and refused to permit Mr. R. B. Beadles to perform service required on his position on April 15, 1965, and filled said position with an extra telegrapher.

2. Carrier shall compensate Mr. R. B. Beadles for eight (8) hours at the time and one-half rate, in addition to the amount he has been paid for April 15, 1965.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective April 10, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. R. B. Beadles, hereinafter referred to as claimant, is regularly assigned to the towerman-telegrapher position at "AY" Tower, Acca Yard, Richmond, Virginia. This is a seven day position with rest days of Saturday and Sunday and assigned hours of 4:00 P. M. to 12:00 Midnight.

Thursday, April 15, 1965, was a work day and also the birthday of claimant.

Carrier refused to permit claimant to work on April 15, 1965 and filled his assignment with an extra employe.

The Carrier, in its letter of June 30, 1965 to the General Chairman, letter attached hereto as TCU Exhibit 5, said, in part:

"The August 21, 1954 Agreement, as amended, provides that each regularly assigned employe, who meets the qualifying conditions, shall receive eight hours' pay at pro rata rate if one of the seven (7) enumerated holidays falls on a work day of the work week of his assignment. Under the practice on this property, if an employe's posi-

of the August 21, 1954 Agreement, as revised, provides that 'if an employe's birthday falls on a work day of the work week of the individual employe **he shall be given the day off with pay.**' (Emphasis ours.) The use of the word 'shall' clearly implies that the Carrier must permit the man to be off on his birthday if a qualified extra employe is available. Fourth, whereas the practice of filling all vacancies with extra men at straight time rate, whenever possible, could not be followed on the seven (7) recognized holidays, it does come into play on the birthday holiday because in general the day will not be a holiday for the extra man.

In my opinion, Article II, Section 6(g), of the November 20, 1964, Agreement was not intended to change the clear intent of Article 6(a), which obligated us to let the employe off with pay on his birthday, if possible. It has always been the practice on this property not to work any employe at time and one-half if a qualified extra employe is available to work the job at pro rata. It was clearly the intent of the 40-Hour Week Agreement that regularly assigned employes would not be worked at overtime rates if this deprived extra employes from getting 40 straight time hours in their work week. If an employe's position must be filled on his birthday, and if there is no qualified extra employe available to work the vacancy at pro rata rate, then it was the intent of the Agreement (Article IX, Section 1(m)) for the regular man to be given preference to working the job at overtime rate, instead of using an extra man at overtime rate.

We stand by the practice on this property, and it is interesting to note that the Clerks' Organization, which is also a party to the same November 20, 1964 Agreement, upon which your claim is based, have not taken any exception to the interpretation we have made in regard to letting employes off on their birthdays and filling the vacancies with extra employes at pro rata rates. To our knowledge, what was done in the Beadles claim has been done several times on 7-day clerical positions, without exception being taken thereto.

I regret that you intend to handle this claim further. However, as we believe the general intent of holiday pay rules is to let the employe off and preserve his earnings where the birthday holiday falls in the work week of his assignment— not to give such employe an additional 'wind-fall' at the expense of an extra employe, we feel compelled to retain our original position, and the claim accordingly remains declined."

OPINION OF BOARD: Claimant was the regularly assigned incumbent of a Towerman-Telegrapher position at Richmond, Virginia. His birthday fell on Thursday, April 15, 1965, which was a work day of his assignment. Pursuant to the November 20, 1964 National Agreement he was given the day off with pay. His position, however, was required to be filled and it was worked by an extra employe who would otherwise not have had forty hours of work in his work week.

Claim was filed in behalf of the regular employe on the ground that he had prior right to be used and be paid the holiday rate of time and one-half.

This same issue has been before the Board a number of times and has been decided in favor of the Employes' position. Awards 15227, 15398, 15598, 15638, 15783, 15911, among others. Accordingly the claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 20th day of December 1968.

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