

Award No. 16857
Docket No. TE-16354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven & Hartford Railroad Company, that:

1. Carrier violated the agreement between the parties when it failed and refused to properly compensate Mr. E. T. Petit for working the hours of his assignment on November 14, 1965, a regularly assigned Rest Day which was also his Birthday-Holiday.

2. Carrier shall be required to compensate Mr. Petit for 8 hours at one and one-half times the rate of his position in addition to the amount already paid.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between The New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949 as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The Claimant Mr. E. T. Petit is regularly assigned as second trick leverman in Signal Station 38, Stamford, Connecticut. On Sunday, November 14, 1965 which was an assigned rest day of his assignment, he was called by the Carrier to perform service during his assigned hours. Coincidentally, November 14, 1965 was also his birthday. Mr. Petit claimed 8 hours pro rata for his Birthday-Holiday, 8 hours at time and one-half for working on his Birthday-Holiday and 8 hours at time and one-half for working his assigned hours on his Rest Day. Carrier paid him for 8 hours at the pro rata rate and 8 hours at one and one-half times the hourly rate of his job.

There is no disagreement as to the facts, the dispute is over the compensation.

TCU Exhibits 1 through 7 are reproductions of all the correspondence exchanged on the property in an effort to affect a settlement of this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant Edwin T. Pettit owned second trick lever position at Signal Station 38, Stamford, Connecticut.

On Sunday, November 14, 1965, one of Mr. Pettit's regularly assigned rest days, he was called on to perform service within his assigned hours. November 14, 1965, was coincidentally the claimant's birthday. For service performed on that date, claimant was paid eight hours at the punitive rate for service rendered on his rest day and eight hours' pro rata pay for his birthday holiday.

Under date of December 1, 1965, claim was instituted on behalf of Mr. Pettit for payment of eight hours at the punitive rate for service rendered on his birthday holiday.

Attached as Carrier's Exhibit A is copy of appeal of former General Chairman J. F. Kelleher to the undersigned. Attached as Carrier's Exhibit B is copy of decision of the undersigned who is the highest designated officer on the property to handle claims and grievances.

Copy of the Agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This is another in a long series of cases, wherein Claimant was required to be a birthday holiday. These cases have been resolved in favor of the Claimant and we affirm these decisions.

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 20th day of December 1968.

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