

Award No. 16983
Docket No. CL-17421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6389) that:

(a) The Carrier violated the current Clerks' Agreement when it failed to compensate John R. Howard, Cut-off Group 3 Employee, for his Birthday, Saturday, March 18, 1967; and

(b) John R. Howard now be compensated at the rate of \$22.94 for this date.

EMPLOYEES' STATEMENT OF FACTS:

1. Claimant John R. Howard is employed in the Carrier's Transportation Department, Ashland, Kentucky Seniority District and has seniority dating from August 17, 1950. Claimant does not stand for an established position but performs such extra work as is available under the provisions of the General Agreement.

2. Claimant's birthday anniversary was on Saturday, March 18, 1967. During the thirty days next preceding his birthday Claimant was granted ten days' vacation, March 6 through 17, 1967 and qualified for holiday pay for Washington's Birthday, February 22, 1967.

3. The Carrier failed to allow Claimant one pro rata day's pay for his birthday, March 18, 1967. Claim was duly filed on April 24, 1967 and, being declined, was appealed through established channels up to Carrier's highest Officer designated to receive and consider such appeals. Conference was held on May 23, 1967 after which the Carrier finally and definitely denied the claim. Copies of correspondence in connection with the claim are attached and identified as Employees' Exhibits A through E.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claimant in this case, John R. Howard, is a cut-off (furloughed) employe in the Transportation Department, Ashland-Big Sandy District, with seniority on the Group 3 roster as of August 17, 1950. As a cut-off (furloughed) employe claimant has requested in accordance with applicable provisions of the Clerical Agreement that he be used to perform extra work at Ashland Passenger Station, Hitchins and Olive Hill, Kentucky.

During the thirty calendar days immediately preceding his Birthday Holiday, March 18, 1967, Mr. Howard performed no compensated service for the Carrier, but was allowed holiday pay for February 22, 1967, and was granted ten days' vacation during the period from March 6 through March 17, 1967. Mr. Howard was not allowed holiday pay for March 18, 1967, his Birthday Holiday, due to his failure to meet the qualifying requirements of Article II of the National Agreement of November 20, 1964.

It is the claim of the employes that Mr. Howard should be paid a day's pay at the rate of \$22.94 for his Birthday Holiday, March 18, 1967, as he received ten days' compensation as vacation pay and one day's pay for the Washington Birthday Holiday, February 22, 1967, for a total of eleven days' compensation during the thirty calendar days immediately preceding his birthday, March 18, 1967.

The Carrier submits that Mr. Howard did not meet the qualifying requirements of Article II of the August 21, 1954 Agreement, as amended by Article III of the August 19, 1960 Agreement and Article II of the November 20, 1964 Agreement.

The General Chairman's letter of May 4, 1967, appealing this claim and Carrier's letter of June 26, 1967, declining same are attached hereto and identified as Carrier's Exhibits A and B respectively.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a furloughed employe. During the thirty calendar days immediately preceding his birthday (March 18, 1967), Claimant performed no service, but was granted and compensated for ten days' vacation (March 6 through March 17) and holiday pay for February 22. The Organization contends that Claimant became eligible for Birthday Holiday pay for the reason that he was compensated for eleven (11) days (10 days' vacation and 1 day for Washington's Birthday Holiday) during the thirty (30) calendar days immediately preceding Claimant's Birthday. Carrier contends that Claimant was not "compensated for service" within the meaning of Article II of August 21, 1954 Agreement as amended by Article III of the August 19, 1960 Agreement and Article II of the November 20, 1964 Agreement in that vacation or holiday pay cannot be considered as "compensation for service."

The issue was determined in Award 14816 (Dugan), which states:

"Nothing in the Agreement of August 19, 1960, requires that Claimant actually renders service or works during the 30 calendar days' period immediately prior to the holiday. All Claimant has to prove in this instance is that she had compensation for service paid her by Carrier credited to 11 or more days of the 30 calendar days immediately prior to the holiday in question.

Further, the August 19, 1960 Agreement provides that compensation paid under sick leave rules or practices will not be considered as compensation for purposes of this rule. There is no such exception made in said Agreement as to vacation compensation."

Also see Awards 14501 (Dorsey), 14674 (House), 15467 (Lynch) and 16089 (Woody).

Accordingly, this claim will be 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 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 February 1969.