



Award No. 17112

Docket No. TE-16305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when it required or permitted an employee not entitled by the Agreement to perform the work of E. F. Pettet, agent-operator, Forest City, Missouri, on Sunday, February 6, 1965, Mr. Pettet's birthday-holiday.
2. Carrier shall compensate Mr. E. F. Pettet in the amount of eight (8) hours at time and one-half, in addition to compensation already paid, for the violation on February 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective May 1, 1953, as amended and supplemented is available to your Board and by this reference is made a part hereof.

Mr. E. F. Pettet, hereinafter referred to as Claimant, is regularly assigned to the agent-operator position at Forest City, Missouri, with a work week of Tuesday through Saturday, rest days Sunday and Monday.

Saturday, February 6, 1965, was Claimant's birthday. Claimant was not permitted to work on his birthday and was relieved by an extra employee.

Claimant performed service on the following holidays in 1964: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Thanksgiving Day and Christmas.

Claimant was allowed eight (8) hours' pay at straight time rate for February 6, 1965. Carrier refused to allow an additional eight (8) hours at time and one-half rate.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 8.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant is assigned as agent-operator at Forest City, Missouri, 8:00 A.M. to 5:00 P.M., Tuesday through Saturday, with Sunday and Monday as rest days. The date of the claim, Saturday, February 6, 1965, was a regular assigned work day for claimant and it was also his birthday.

Claimant was notified in advance of the claim date that he would be given the day off with pay because it was his birthday, and arrangements were made to replace him with a qualified available extra operator in the same manner as is always done when this position is temporarily vacant. This arrangement was also in conformity with the provisions of Mediation Agreement, Case A-7127, signed at Chicago, Illinois, November 20, 1964, to become effective with the calendar year 1965. The claim date here involved is not one of the so-called "legal holidays" referred to in Rule 8, Section 2, of the currently effective collective agreement on which date Carrier's operations are curtailed generally, but it was only a birthday-holiday for this individual claimant which resulted in a temporary vacancy. Proceeding on the basis that claimant's absence on his birthday created a temporary vacancy similar to an approved lay-off or a sick day for a particular employe, the Carrier filled the vacancy just as it always has and does, i.e., by using the senior available qualified extra employe to fill the vacancy.

The claimant was granted the day off on his birthday, with pay, as provided for in Article II, Section 6 (a) of Agreement A-7127, and then he filed claim for an additional 8 hours pay at time and one half rate, even though he did not perform any service on the claim date.

The schedule of rules agreement between the parties, effective May 1, 1953, and amendments thereto, including Mediation Agreement A-7127 and the August 21, 1954 Agreement are by reference made a part of this submission.

OPINION OF BOARD: Petitioner herein in claiming that under Section 6(g) of the November 20, 1964 Agreement he should have been permitted by Carrier to work his birthday-holiday which occurred on one of his regularly assigned workdays, rather than being allowed to take the day off with pay. In this instance Carrier assigned another employe to said vacant position on petitioner's said birthday.

This Board in Award No. 15227, clearly stated:

"As on legal holidays, equally applicable to an employe's birthday, the Carrier is privileged to blank the employe's assignment that day in whole or in part (Award 7136), but when, as here, Carrier finds it necessary to fill the employe's position on his birthday, he is entitled to be used. Award 7134."

See also Second Division Award No. 5523; Third Division Award Nos. 15988, 15911, 16666 and 16811.

Therefore in view of these Awards, which we do not find palpably erroneous and which we find controlling herein, we must sustain the claim.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.