Award Number 17367
Docket Number TE-16721

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. Carrier violated the terms of an Agreement between the parties hereto when it failed and refused to compensate J. C. Evans, eight (8) hours at the time and one-half rate for work performed on August 17, 1965, his birthday, when his position worked while he was on vacation.

2. Carrier shall, because of the violation set out above, compensate J. C. Evans eight (8) hours at the time and one-half rate of his position in addition to payment he has already received.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as Carrier, and its employees in the classes specified therein, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective September 1, 1949, as amended and supplemented, is available to your Board and is, by this reference, made a part hereof.

The relevent and material facts dispositive to this case are simple and undisputed. J. C. Evans, hereinafter referred to as claimant, on the date involved in the claim, was the regularly assigned second assistant chief operator at Miles City, Montana. Work week Sunday through Thursday, rest days Friday and Saturday. Assigned hours 12:00 Midnight to 8:00 A.M.

Pursuant to the provisions of the National Vacation Agreement, claimant was on his vacation on Tuesday, August 17, 1965. Tuesday, August 17, 1965 was a regular work day of his position. His position, while he was on vacation, was filled by an extra employee. Claimant for this date claimed eight (8) hours, pay at the pro rata rate as a vacation allowance and in addition he also claimed eight hours' pay at the time and one-half rate because his position worked on Tuesday, August 17, 1965, which was also his birthday. Carrier allowed claimant eight (8) hours at the pro rata rate as a vacation allowance but failed and refused to allow his claim for

Dear Sir:

This refers to your letter of April 18, 1966, files C-2115 and C-2116, in regard to claims in behalf of J. C. Evans and E. L. Zeiser respectively, for an additional payment of 8 hours at the penalty rate on August 17, 1965.

Please be advised that it is my intention to submit the cases to the Third Division, N. R. A. B. for decision.

Yours truly,

/s/ W. E. Waters
General Chairman

CARRIER'S STATEMENT OF FACTS: Claimant J. C. Evans was the regularly assigned occupant of the Second Assistant Chief Operator position at Miles City, Montana. His assigned hours were 12.00 A.M. to 8:00 A.M., Sunday through Thursday.

J. C. Evans qualified for and was granted a vacation as follows:

Sunday	8/ 8/65	Sunday	8/15/65
Monday	8/ 9/65	Monday	8/16/65
Tuesday	8/10/65	Tuesday	8/17/65
Wednesday	8/11/65		
Thursday	8/12/65		

Tuesday, August 17, 1965, one of J. C. Evans' vacation days, was also his birthday, which is a holiday for employees who otherwise qualify as provided by Article II of the November 20, 1964 National Agreement. In accordance with Section 3 of Article I of the August 21, 1954 National Agreement reading as follows:

> "When, during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

J. C. Evans' birthday holiday was considered as a day of vacation for which he was allowed eight hours at the pro rate rate. The claimant contended that in addition to the eight hours already allowed for that date, he was entitled to an additional eight hours at time and one-half rate for August 17, 1965. Hence this claim before your Board.

Attached hereto please find Carrier's Exhibits "A" and "B".

(Exhibits Not Reproduced)

OPINION OF BOARD: At the time of the incidents which gave rise to this claim, Claimant was the regularly assigned second assistant chief operator at Miles, Montana, with Sunday through Thursday work week, rest days Friday and Saturday, assigned hours 12:00 Midnight to 8:00 A.M.

Pursuant to Agreement terms, Claimant was granted a vacation of eight work days from beginning of work day August 8, 1965 to end of work day Tuesday, August 17, 1965. The last of these days was also Claimant's birthday and therefore, a holiday for him, pursuant to Article II of the November 20, 1964 National Agreement.

It is not disputed that Claimant's position was filled by a relief employe during the entire period of the eight day vacation, including August 17, 1965, Claimant's birthday.

In accordance with Article I, Section 3 of the August 21, 1954 Claimant's birthday holiday was considered as a day of vacation for which he was allowed eight hours pay at the pro rata rate. Claimant contends that he was entitled to additional eight hours compensation at the time and one-half rate.

This basic set of facts was before us, involving the same Carrier and Organization, same applicable rules, but another Claimant (same birthday) in a dispute on which we issued Award No. 17366. For the reasons stated there, we sustained the claim. For the same raesons we sustain the instant 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 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 1st day of August 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.