



Award Number 17371

Docket Number CL-18019

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6508) that:

- (a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 4-A-2(c), as well as Article II of the National Agreement of August 21, 1954 as amended, when the Claimant's birthday-holiday fell on her second relief day, and the Claimant worked the day following but was paid only eight hours' pay at the pro rata rate of pay instead of eight hours' pay at the time and one-half rate of pay.
- (b) Claimant Rosemary B. Neilson, a clerical employee employed in the office of the Manager, Business Systems and Information Processing Department, a sub-department of the Financial Department, System General Offices, Philadelphia, Pa., be paid four hours' additional pay for Monday, April 10, 1967 when her birthday fell on Sunday, April 9, 1967.

(Docket 2140)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company - hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Effective February 1, 1968, the New York Central Company was merged into the Pennsylvania Railroad Company, and a new Company resulted,

On October 2, 1967, the Division Chairman advised the Director he did not accept his denial and requested preparation of a Joint Submission, a copy of which is attached as Exhibit "A".

At meeting on November 15, 1967, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager denied the claim with his letter dated November 21, 1967, copy attached as Exhibit "B".

Claim was rediscussed at special meeting on January 22, 23 and 24, 1968. The Manager reaffirmed his denial by letter dated February 21, 1968.

Therefore, so far as the Carrier is able to anticipate the basis for the Employees' Claim, the questions to be decided in this dispute are whether the so-called "shifting holiday" rule (4-A-2 (c)) applies to an employee's birthday under the provisions of the controlling Agreements and, if so, does the "shifting holiday" principle apply to the particular facts in this dispute where the birthday holiday coincides with a Sunday relief day, and whether Claimant is entitled to four (4) hours' additional pay for the service performed on Monday, April 10, 1967.

(Exhibits not reproduced)

OPINION OF BOARD: At the time this dispute arose, Claimant employee held a regular monthly rated clerical position, rest days Saturdays and Sundays, in the office of the Manager, Business Systems and Information Processing Department, a sub-department of the Financial Department, System General Offices, of the Carrier, located in Philadelphia, Pa. In 1967, her birthday fell on Sunday, April 9th. It is undisputed that by the terms of Article II, Section 6, National Mediation Agreement of November 20, 1964, each hourly, daily and weekly rated employee is entitled to one additional day off with pay or an additional day's pay on each such employee's birthday, subject to certain "qualifying requirements." In accordance therewith, Claimant was given compensation for said birthday-holiday in the same fashion as all employees are paid for all Agreement holidays, by adjusted monthly rate of pay computed to include all said holidays.

The controversy concerns compensation paid to Claimant for work done on Monday, April 10, 1967, the day following her rest day-birthday-holiday. She was paid at the straight time rate of pay for eight hours' work performed on said day. Claimant demands amendment of said compensation to payment of eight hours at time and one-half rate.

Petitioning Organization argues its position on the following grounds:

1. Rule 4-A-2(a) of the Agreement reads as follows:

"4-A-2. (a) (Effective September 1, 1949) Work performed on the following legal holidays, namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half."

It is Claimant's position that inasmuch as Article II of the Agreement of November 20, 1964 was an amendment to the Agreement of August 21,

1954 by addition of a birthday-holiday, it follows that the observation on Monday of the then existing Agreement holidays (and payment for work thereon at time and one-half rates) controls the added birthday-holiday in the same manner.

2. Rule 4-A-2(c) of the Agreement reads as follows:

"4-A-2. (c) (Effective September 1, 1949) When a regularly assigned employe has an assigned relief day other than Sunday, and one of the holidays specified in paragraph (a) of this rule (4-A-2) falls on such relief day, the day following will be considered his holiday."

Claimant contends that inasmuch as 4-A-2 declares that when holidays fall on rest days, the day which follows is to be a holiday, it follows that the same principle applies to the birthday-holiday now one of the Agreement holidays by the provisions of Article II, Section 6.

3. Claimant also cites Article II, Section 6 (g) of the November 20, 1964 Agreement:

"Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

In further support of its position Claimant cites Award 8541 in which this Board, (without referee) allowed certain claimants an additional day's pay at time and one-half for services performed on a day after a mid-week holiday.

Referring more specifically to a birthday-holiday, Claimant cites Awards 15398 and 15227 in which this Board denied Carrier's right to compel an employee to be off on his birthday-holiday (substituting another employee) rather than permit him to work that day at holiday pay and Award 3, Docket CL-16510, Public Law Board 3 on the same subject with the same result.

Claimant derives from these Awards, a conclusion that "the birthday-holiday has been considered, since its inception as a holiday in 1965, by both parties to the National Agreement, the same as the other recognized holidays, and this fact has been so interpreted and confirmed by the Awards of your Honorable Board cited above, as well as those of other similar Boards established under the Railway Labor Act."

Carrier contends that Regulation 4-A-2 by its terms deals only with the seven legal holidays specifically named in subsection (a) thereof. As for Regulation 4-A-2 (c), in Carrier's view, it provides only that when a regularly assigned employe has an assigned relief day other than Sunday and one of the holidays expressly listed in 4-A-2(a) falls on such relief day, the day following will be considered the employee's holiday. In the instant situation, the relief day involved is a Sunday and is therefore clearly excluded from 4-A-2 (c). Furthermore the holiday involved in the case before us is the Claimant's birthday-holiday, not one of the seven "legal" holidays enumerated in 4-A-2(a).

In respect to Claimant's reliance on Article II, Section 6 (g), Carrier regards said proviso as not pertinent to the instant facts. The cited clause deals with the question of an employee working on a holiday and payment

for working thereon. The claim here is for a day following a rest day-birthday-holiday.

Carrier denies that the Awards cited by Claimant are on the fact situation of the subject at issue. All deal with either work performed or work refused on a mid-week-holiday or on the day following such a holiday, not involved here.

We do not find in the controlling Rules or Agreement terms any expression of intent to treat birthday-holidays following on a Sunday day of rest in the same fashion in which legal holidays are treated in Regulation 4-A-2 as regards compensation for the Monday which follows. Regulation 4-A-2(a) is precise and unambiguous in its reference only to the stated legal holidays. Nothing can be found therein to justify inclusion under the same terms of the later-added birthday-holiday. A statement would be needed in the same express terms to achieve such a result for the latter. We find none. The subject of 4-A-2(c) is other than involved in the instant claim: it deals with the results of assigning a regularly assigned employee to a relief day other than Sunday when one of the legal holidays listed in 4-A-2(a) falls on said relief day, clearly not involved here.

Nor do we find any provision in the detailed statements of Article II of the November 20, 1964 Agreement which provides for payment at time and one-half rates for Mondays after the rest day Sunday on which an employee's birthday-holiday falls. On the other hand, as Carrier has pointed out, Article II, Section 6 goes to careful pains to provide for many special circumstances surrounding a birthday-holiday. In that context, the omission of an affirmative statement for observance of Sunday rest day birthday-holidays on the following Monday by the payment of premium pay therefor, must be held to reveal absence of such an intent. Awards 14937, 15876, 4439.

The Awards cited by Claimant simply do not deal with the same fact situation as we have here and are of no precedential value.

We conclude that the claim must be denied.

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 not violated.

A W A R D

Claim denied.

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.