



Award Number 17427

Docket Number TE-16560

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, 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 improperly relieved Telegrapher R. A. Rasmussen on June 4, 1965, his birthday.
2. Carrier shall, because of the violation set out above, compensate R. A. Rasmussen for eight (8) hours pay at the time and one-half rate.

EMPLOYEES' 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 issue is the right of an employee to fill his position on a work day thereof, which is his birthday, against the filling of said position by an extra employee.

The material and relevant facts are simple and undisputed. R. A. Rasmussen, hereinafter referred to as claimant, on the date involved in the claim was the regularly assigned occupant of the telegrapher's position in the Tacoma, Washington Relay Office. Friday, June 4, 1964, a work day of claimant's work week, was claimant's birthday. Pursuant to the terms of Mediation Agreement A-7127 and 7128, effective November 20, 1964, Article II—Holidays, and more specifically Section 6 and 6(g) thereof, reading:

"Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily and weekly rated employee shall receive one additional day off with pay, or an additional day's pay, on each such employee's birthday, as hereinafter provided.

* * * * *

Friday, June 4, 1965 was claimant Rasmussen's birthday.

Section 6(a), Article II—Holidays of the Agreement dated November 20, 1964 reads as follows:

"(a) For regularly assigned employees, if an employee's birthday falls on a work day of the work week of the individual employee he shall be given the day off with pay; if an employee's birthday falls on other than a work day of the work week of the individual employee, he shall receive eight hours' pay at the pro rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any." (Emphasis ours)

In accordance with the provisions of the aforequoted, which specifically provides that regularly assigned employees such as claimant Rasmussen shall be given their birthday off, claimant Rasmussen was, on his birthday, i.e., June 4, 1965, given the day off for which he was allowed, also in accordance with the provisions of the aforequoted and having otherwise qualified therefor, 8 hours pay at the pro rata rate.

The Operator Position claimant Rasmussen would have worked on June 4, 1965 had that day not been his birthday and had he not been given the day off in accordance with that portion of Section 6(a), Article II—Holidays of the Agreement dated November 20, 1964 which specifically provides that regularly assigned employees such as claimant Rasmussen "* * * shall be given the day off * * *" on their birthday, was filled on June 4, 1965 by an extra unassigned employee in accordance with applicable rules who was allowed, also in accordance with applicable rules, 8 hours at the straight time rate of pay for such service.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Assistant
to Vice President, to Mr. W. E. Waters, General
Chairman, under date of October 13, 1965Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. Waters
under date of April 14, 1966Carrier's Exhibit "B"

(Exhibits not reproduced)

OPINION OF BOARD: Claimant R. A. Rasmussen was regularly assigned to position of Operator, Relay Office, Tacoma, Washington. Assigned hours were 3:30 P.M. to 11:30 P.M., Monday through Friday, rest days Saturday and Sunday. Friday, June 4, 1965, was Claimant's birthday; he was not permitted to work his regular assignment on this date and the position was filled by an extra employee. Claimant was allowed a pro rata day's pay, under provisions of Article II, Section 6(a), November 20, 1964 Agreement.

The Organization contends that he had a preferential contract right to work his regular assignment on his birthday, because the position was required to be and was filled by use of an extra employee. Carrier contends that it was proper to "lay-off" the Claimant on his birthday, and to fill the resulting vacancy by using an extra employee.

The issue presented in this docket has been resolved many times by this Division and the Second division. All of the cases have involved identical rules. In Award 15783, involving this Carrier but another Organization, Car-

rier submitted the same arguments as urged in the instant docket. In this case Referee John J. McGovern said:

"Petitioner contends that the Claimant had a preferential right to work on his birthday pursuant to the Clerk's Agreement. Carrier, on the other hand, argues that the language of the Mediation Agreement of November 20, 1964 is mandatory, and that employees must be given a day off with pay on their birthday anniversary.

"The identical issue was presented in Award 15638. We concur with the reasoning in that case and the conclusion that the Claimant, in accordance with the provisions of the 1964 Mediation Agreement, did have preferential right to work and was, indeed, entitled to such work on his birthday. (Awards 15638, 15227, 15598). We will sustain the claim."

Since rendition of Award 15227, on January 31, 1967, the Board has sustained similar claims in Awards: Third Division 15398, 15598, 15599, 15638, 15694, 15783, 15911, 16666, 16811, 16856, 17190, 17112, 17088; Second Division 5523, 5539.

The 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.

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 11th day of September 1969.