Award Number 17471
Docket Number TE-16402

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Houston Belt and Terminal Railway, that:

1. Carrier failed to compensate J. L. Dwyer his full and due compensation for work performed on March 4, 1965 at Tower 85 from 11:00 P.M. to March 5, at 7:00 A.M., while performing work on his birthday and his rest day.

2. Carrier shall compensate Telegrapher Dwyer eight (8) hours at time and one-half rate for work performed on birthday holiday in addition to pay for rest day already compensated by Carrier.

EMPLOYES' STATEMENT OF FACTS: Claimant J. L. Dwyer is regularly assigned to the 11:00 P.M. to 7:00 A.M. position at Tower 85 with an assigned work week beginning on Friday and having assigned rest days of Wednesday and Thursday. On Thursday, March 4, 1965, which was one of his assigned rest days and also his birthday, Claimant Dwyer was required to work his position. The Carrier compensated Claimant Dwyer for eight hours at the time and one-half rate for the rest day work, as well as eight hours at pro rata rate for the holiday. The Carrier denied the claim for eight hours at time and one-half for work performed on a holiday. The total amount of the claim is $33.64 which is eight hours at the time and one-half rate for work performed on holidays.

Claim was made and appealed to the highest officer and declined by him. Claim is now properly before your Board for final adjudication.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Copy of agreement between the organization and the carrier is on file with your Honorable Board and by reference is made part of this submission. Claimant, Telegrapher J. L. Dwyer, is regularly assigned 11:00 P.M. to 7:00 A.M. Tower 85, with rest days Wednesday and Thursday. Due to not having a rested qualified relief or extra employee available for 11:00 P.M., Thursday, March 4, 1965, carrier called claimant for service on his rest day in accordance with the provisions of the agreement. Carrier compensated claimant for service on March 4, 1965, 8 hours time and one half for rest day and in addition thereto compensated claimant 8 hours straight time holiday allowance. Claimant

did not present a claim, but filled in a daily time report showing 2 1/2 time rate of pay for holiday plus 1 1/2 time rate of pay for rest day and left the daily time report in Tower 85 for the first trick telegrapher in order to permit preparation of time roll. (Exhibit A.) Rule #7 Paragraph (f) requires:

> "(f) Tickets will be rendered for all overtime claimed and mailed to proper official within forty-eight (48) hours after service is performed. If for any reason the overtime is not allowed, the employee will be so advised within five days, stating reasons."

The daily time reports covering the first thru the 15th of March were received by the carrier's payroll department March 17, 1965, consisting of a payroll sheet and the 45 daily time reports in date order. No claim, as such, was presented by claimant; therefore, carrier's first knowledge of claim was District Chairman's letter of May 24, 1965, presenting claim under file B-14, which presentation was in excess of the 60 days as provided in Article 5 of the agreement of August 21, 1954, Section 1, Paragraph (a). (Exhibit B.)

Superintendent Reese, on June 2, 1965, replied to District Chairman's letter in an attempt to explain the amount of allowance and declined the claim (Exhibit C). June 17, 1965, District Chairman Verorak advised Superintendent Reese that he would appeal claim (Exhibit D). June 19, 1965, General Chairman Phillips presented appeal, presenting both the time limit and merit factors (Exhibit E). July 13, 1965, President and General Manager, R. H. Anderson, attempted explanation of the compensation allowed claimant as well as directing the organization to Article 2 of the agreement of November 20, 1964, and declining claim (Exhibit F). August 5, 1965, organization requested conference (Exhibit G). Conference was held September 15, 1965, and during this conference carrier discussed the failure of claimant to comply with Rule 7, Paragraph (f) of the agreement (Exhibit H). General Chairman Phillips, on February 28, 1966, introduced additional awards (Exhibit I) and in reply dated March 8, 1966, carrier again directed the organization to the November 20, 1964 agreement, Article 2, Section 6(a). (Exhibit J.)

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was required to work on March 4, 1965, which was one of his assigned rest days and also his birthday. He was paid eight hours at the pro rata rate for his birthday holiday and eight hours at the time and one-half rate for working. Claimant seeks an additional eight hours pay at the time and one-half rate.

The issues involved in this dispute are the same as those involved in numerous awards of this Board, such as Awards 17050, 16857, 16855, 16845, 16643, 16291, 16153, 16101, 15892, 15875, 15764, 15440, and 15398, which sustained the claims. Accordingly the instant 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 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 26th day of September 1969.

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