



Award Number 17519

Docket Number TE-16611

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

J. D. Fort, Printer Operator, Philadelphia Message Office, is entitled to be paid the difference between the pro rata and punitive rate for working March 4, 1965, due to the claimant's birthday, March 3, 1965, fell on his second assigned rest day, Regulation 4-H-1(c) and Third Division Award 8507 governing.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective September 1, 1949, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

Claimant's assigned rest days were Tuesday and Wednesday. Wednesday, March 3, 1965, was his birthday anniversary. He performed no service on that date. He worked the following day, March 4, 1965 (claim date), the first day of his assigned work week.

For the service performed on March 4, 1965, claimant requested payment at the time and one-half rate but Carrier allowed only the pro rate rate. Claim for the difference was appealed in the usual manner and within the time limits prescribed in the Agreement.

In accordance with procedure in effect between the parties, the District Chairman and the Superintendent-Personnel prepared a "joint submission" for appeal consideration on the part of the General Chairman and Manager-Labor Relations. Copy of that "joint submission," dated September 9, 1965, is appended hereto as TCU Exhibit 1.

Following conference on October 7, 1965 at the highest level of handling disputes of this nature, the parties exchanged letters reproduced and appended hereto as TCU Exhibit 2.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: The dispute in this case at PO Message Office, Philadelphia, Pennsylvania, on the Philadelphia Division of the Carrier's Eastern Region. The Claimant held a regularly assigned posi-

for further consideration by the Manager. The claim again was denied by the Manager in his letter of January 20, 1966. Copies of the General Chairman's letter of November 24th and the Manager's letter of January 20th are attached as Exhibits "D" and "E" respectively.

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 (Regulation 4-H-1 (c)) applies to an employee's birthday under the provisions of the controlling Agreements and whether the Claimant is entitled to the overtime rate for the service performed on March 4, 1965.

(Exhibits Not Reproduced)

OPINION OF BOARD: Although the facts involved in the instant dispute are relatively simple, the problem presented therein is much more complicated. The Claimant's regularly assigned days as Printer Operator were Thursday through Monday, rest days Tuesday and Wednesday. His birthday in 1965, fell on Wednesday, March 3—the second of his two rest days—without performing any service on that day. Thereafter, on Thursday, March 4, his first work day of that week, he performed service and was compensated at the regular pro rata rate.

It is the Organization's contention that the Claimant should have been compensated for the service performed on Thursday, at the premium rate. Thus, the instant claim seeks to recover the difference in rate of pay between the pro rata and premium rate.

The Organization predicates its claim under Regulation 4-H-1(c), hereinafter quoted, to the effect that a birthday holiday is to be treated in the same manner as the seven designated legal holidays:

"(c) When one of the holidays specified in Paragraphs (a) and (b) of this Regulation (4-H-1) falls on the second rest day, other than Sunday, of an employee's work week, the day following will be considered his holiday."

It is the Carrier's position that paragraph (c) of Regulation 4-H-1 is inapplicable, as the birthday holiday is not included in the enumerated holidays therein. Furthermore, as evidence of the intent of the parties to exclude birthday holidays, the Agreement effective on July 1, 1965—four months subsequent to the instant claim—contained an additional negotiated paragraph (d), hereinafter quoted:

"(d) With regard to Birthday Holiday, the provisions of the Agreement of November 20, 1964 are applicable."

The Carrier does concede that in certain limited instances, a birthday holiday would be celebrated on other than the actual date of the birthday. The 1964 Agreement, Article II, Section 6(f), provides for a change in observing a birthday holiday under the following circumstances:

- (1) Working away from his residence.
- (2) If it falls on February 29.
- (3) Or, if birthday falls on one of the seven designated holidays.

However, nowhere is there any mention of a birthday observance as a holiday if it falls on the second rest day.

The Organization, however, counters these arguments by relying not only on Regulation 4-H-1(c), but also on the 1964 National Agreement, Article II, Section 6(g), hereinafter quoted:

"(g) 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 support of its position, the Organization cites Award Nos. 8506 and 8507. In Award No. 8506, Labor Day, one of the seven designated legal holidays, fell on Claimant's second rest day. Therefore, Tuesday, the following day on which he performed service, was considered the Claimant's holiday pursuant to Rule 4-H-1(c). We are in accord with that Award, however, we would also emphasize that involved therein was a designated legal holiday—clearly within the ambit of paragraph (c).

In Award No. 8507, it, similarly, involved a legal holiday—Labor Day. In the instant dispute, the Organization, by analogy, seeks to have the birthday holiday considered in the same vein as the seven designated legal holidays.

In order for us to construe the Agreement as the Organization argues, we would be required to add to the terms thereof. We recognize that our function is limited to interpreting the Agreement as negotiated by the parties. We lack the power to add, amend, alter or abrogate any provision of the effective Agreement. Inasmuch as Regulation 4-H-1 specifically limits its provisions to the seven designated holidays enumerated therein, we find that the instant claim requires that it be denied.

We would add one further comment with reference to the 1964 National Agreement, Article II, Section 6(g). This section specifies the method of payment for work performed on holidays and such shall also be applicable on his birthday. We note that the purpose of this provision is intended to govern instances where the employee performs work on his birthday. In the instant situation, the Claimant observed his birthday on a rest day and did not perform any service for the Carrier on that day. Hence, the claim is 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 6th day of October 1969.