

Award No. 15227
Docket No. CL-15925

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

. (Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5871) that:

(1) Carrier violated the Clerks' Agreement when it refused to permit Charles O'Donnell to work his regular assignment on February 15, 1965, which was a regular work day and his birthday.

(2) Carrier shall now be required to compensate Charles O'Donnell eight (8) hours at time and one-half rate, a total of \$33.58, for February 15, 1965.

EMPLOYEES' STATEMENT OF FACTS: There is in force and effect a collective bargaining agreement by and between the parties effective August 14, 1950, (revised as of January 1, 1963), a copy of which is on file with the Board, and by reference is made a part of this submission. This Agreement was amended by the Mediation Agreement dated November 20, 1964.

The claim was handled on the property, in the usual manner, through the highest designated officer of the Carrier to handle such matters, and the dispute was not resolved.

The claimant was not permitted to work his birthday holiday, even though he was available and willing to do so.

Mr. Paul Grosso, a checker with a work week Monday to Friday and a starting time of 7:00 A.M. to 3:30 P.M., was brought in early on February 15th to fill Mr. O'Donnell's position. A lower-rated employee was used to fill the vacancy created by Mr. Grosso being assigned to fill the check clerk position, and an extra man was used to fill the last vacancy.

Claim was filed by Mr. O'Donnell on February 16, 1965, Employees' Exhibit No. 1. Reply was made by Mr. Jerpe, Agent, who declined the claim on the ground that there was no overtime paid to the employee who filled his position. Employees' Exhibit No. 2.

OPINION OF BOARD: The facts of record reveal that Claimant was a regularly assigned employee whose birthday fell on a work day of his work week. Carrier gave the Claimant the day off with pay, as it was privileged to do, but then his position was filled that day by use of another employee who ordinarily did not perform the type of work assigned to the vacant position. The claim is that Claimant should have been used to work his position on his birthday.

As on legal holidays, equally applicable to an employee's birthday, the Carrier is privileged to blank the employee's assignment that day in whole or in part (Award 7136), but when, as here, Carrier finds it necessary to fill the employee's position on his birthday, he is entitled to be used. Award 7134.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.