

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5945) that:

(1) Carrier violated the rules of the Clerks' Agreement when on January 12, 1965, it failed to accord Clerk W. T. Coble at Hamlet, North Carolina, the preferential right to work on his birthday.

(2) Carrier be required to pay W. T. Coble as reparation eight (8) hours at the punitive rate of his position for January 12, 1965, in addition to any other compensation paid for that day.

EMPLOYEES' STATEMENT OF FACTS: W. T. Coble, hereinafter referred to as Claimant, was a regularly assigned Clerk at Hamlet, North Carolina, yard office and occupied the position of Assistant Chief Clerk working from 11:00 P. M., to 7:00 A. M., Sunday through Thursday with Friday and Saturday as relief days.

Tuesday, January 12, 1965, was Claimant's birthday and he was instructed not to work on this date and a furloughed Clerk filled his position on that day.

CARRIER'S STATEMENT OF FACTS: There is a duly negotiated agreement in effect between the parties to this dispute, the Brotherhood of Railway and Steamship Clerks, hereinafter shown as the Petitioner, and the Seaboard Air Line Railroad Company, hereinafter shown as the Carrier. That agreement and supplements thereto are on file with your Board and by reference are made a part of this submission.

The Claimant, Mr. W. T. Coble, was a regularly assigned clerical employee at Hamlet, North Carolina. Tuesday, January 12, 1965, was one of Claimant's assigned work days and also Claimant's birthday. In accordance with Article II, Section 6(a) of the November 20, 1964 Mediation Agreement, reading in pertinent part:

"(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 . . ."

Considering these facts, I do not feel that Clerk Coble was entitled to work the position in question on his birthday in preference to furloughed Clerk Beecham. The claim of Clerk Coble for eight hours' pay at overtime rate in addition to the eight hours' pay at straight time rate already received is without contractual merit. Your appeal of Mr. Hamer's decision is respectfully declined."

OPINION OF BOARD: Claimant was a regularly assigned employe whose birthday fell on a work day of his work week. He was instructed not to work, and a furloughed employe filled his position on said date. Petitioner contends that Claimant had a preferential right to work on his birthday pursuant to Rule 51 of the Clerks' Agreement. The pertinent language from Rule 51, Paragraph (a), Note (2) reads as follows:

"While it is recognized that work required on a holiday that would otherwise have been an assigned day under Rule 53 is work required on an unassigned work day, the regular employe shall have preferential right to such work except as provided in Rule 45 (d)."

Article II, Section 6(a) of the November 20, 1964 Mediation Agreement in part provides as follows:

"(a) For regularly assigned employes, if an employe's birthday falls on a work day of the work week of the individual employe he shall be given the day off with pay . . ."

Carrier contends that the pertinent language from the Mediation Agreement of November 20, 1964 is mandatory and that eligible employes must be given a day off with pay on their birthday anniversaries.

A further examination of the Mediation Agreement of November 20, 1964 discloses the following language in Article II—Holidays, Section 6, Paragraph (g):

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

As the "Note" in Rule 51 of the Clerks' Agreement clearly states that when work is required on a holiday, the regular employe shall have preferential right to such work, it is apparent that claimant was entitled to such work on his birthday. Awards 15227, 15598 and 15599.

Accordingly, 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 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 16th day of June 1967.