

**Award No. 16274
Docket No. CL-16572**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6089) that:

1. Carrier violated the Clerks' Rules Agreement when it failed to work the regularly assigned occupant of Position No. 5115 on his Birthday Holiday to perform the duties of his position and in lieu thereof removed the regularly assigned occupant of Position No. 5126 from his regular assignment to perform its work.

2. Carrier shall now be required to compensate employee H. A. Janke, Jr. for eight (8) hours at the overtime rate of Position No. 5115 for May 12, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee H. A. Janke, Jr. is the regularly assigned occupant of Clerk Position No. 5115 in the Store Department Material Division at Milwaukee, Wisconsin, seniority district No. 118. Position No. 5115 is assigned from 7 A.M. to 3:30 P.M. Monday through Friday, with Saturday and Sunday rest days.

Included in the duties of Position No. 5115 is the operation of the Bruning Copyflex Machine, and approximately 5 hours per day is devoted to the operation and care of this machine by employee Janke. See copy of Employee Janke's statement of March 25, 1966, submitted as Employees' Exhibit A.

In lieu of using employee Janke to perform the work of his position No. 5115 on May 12, 1965, employee Robert Sandbom was required, at the direction of District Material Manager H. Marxen, to suspend work on his regularly assigned Typist-Clerk Position No. 5126 and perform the Bruning Copyflex machine work regularly assigned to and performed on Clerk Position No. 5115. See copy of employee Sandbom's statement submitted as Employees' Exhibit B.

Wednesday, May 12, 1965 was Claimant Janke'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 workweek 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 workweek 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."

In accordance with the provisions of the aforementioned, which specifically provide that regularly assigned employees such as Claimant Janke shall be given their birthday off, Claimant Janke was, on his birthday, i.e., May 12, 1965, given the day off for which he was allowed, also in accordance with the provisions of the aforementioned and having otherwise qualified therefor, 8 hours' pay at the pro rata rate.

On Wednesday, May 12, 1965, one of Typist-Clerk Sandbom's regularly assigned work days, he (Employee Sandbom) as the occupant of Typist-Clerk Position No. 5126, operated the Bruning Copyflex Machine for approximately 20 minutes, which was and is entirely proper in view of the fact that said work is assigned to him and regularly performed by him.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. H. R. Marxen, District Material Manager to Mr. J. J. Lipinski, Local Chairman, under date of August 12, 1965; as Carrier's Exhibit B copy of letter written by Mr. S. W. Amour, Assistant to Vice President to Mr. H. V. Gilligan, General Chairman, under date of February 23, 1966, and as Carrier's Exhibit C copy of a letter written by Mr. S. W. Amour to Mr. H. C. Hopper, General Chairman, under date of July 15, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: H. A. Janke, Jr. did not work Position No. 5115 on his Birthday Holiday, May 12, 1965. He filed a claim for compensation at the overtime rate for that day on the theory that Employee R. Sandbom did in fact perform work on the Bruning Copyflex Machine which was regularly assigned to and performed by the claimant.

The Employees contend that Janke spends approximately five hours per day working on the Bruning Copyflex Machine, and that he does 99% of the work done on the machine. Although Sandbom may use the machine on occasion, the Employees continue, his use of it on May 12 was so substantial as to constitute filling the claimant's position, thus entitling Janke to compensation for the day at overtime rates.

The Carrier replies that Janke's position was blanked on the date of his Birthday Holiday, no extra employee being called in. It argues that the copyflex machine was normally used by many employees, including Sandbom, and that the Employees have not proven that his use of it on May 12, 1965 was any greater than normal. It concludes that there is no evidence that Position 5115 was in fact filled, and accordingly the claim must be denied.

There is no question that the Claimant was entitled to have his Birthday Holiday off, and that the Carrier had the right to blank the position on that day (13259). The essential question is whether the Carrier had filled the position by permitting copyflex work normally performed by Janke, to be done by Sandbom.

Janke normally used the copyflex machine more than other employes, but did not operate it exclusively. Sandbom used it also during his regular duties, although not heavily.

"Neither the agreement nor the fact that this work was ordinarily performed by the Claimant during his regular work week demonstrate that it belonged exclusively to him." (Rose, 9491)

From a review of the record it must be concluded that Sandbom performed work on the copyflex machine which he was entitled to perform as part of his regular assignment.

After examining the available evidence we are unconvinced that the work done by Sandbom constituted a filling of Janke's position on the date in question.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1968.