

Award No. 16429
Docket No. CL-16494

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6060) that:

1. Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois, when it failed to call the regularly assigned occupant of Billing Clerk Position No. 294 to fill the position on the Labor Day holiday, September 6, 1965.

2. Carrier shall now be required to compensate employee E. A. Mueller for eight (8) hours at the overtime rate of pay of Position No. 294 for Monday, September 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee E. A. Mueller, who has a seniority date in Seniority District No. 30 of February 20, 1961, is the regularly assigned occupant of Bill Clerk Position No. 294 at Bensenville, Illinois in Seniority District No. 30, with assigned hours of 11:59 P. M. to 7:59 A. M., Wednesday through Sunday, with Monday and Tuesday rest days.

Position No. 294 is a 7-day position, and is relieved on the Monday and Tuesday rest days by Relief Position No. 2.

Employee R. B. Losito, who has a seniority date of September 11, 1963 in Seniority District No. 30, is regularly assigned to Relief Rate and Bill Clerk Position No. 2 in Seniority District No. 30.

Relief Position No. 2 relieves the following positions:

Position 293 from 3 PM to 11 PM - Friday

Position 291 from 11 PM to 7 AM - Saturday and Sunday

Position 294 from 11:59 PM to 7:59 AM - Monday and Tuesday

(Rest days - Wednesday and Thursday)

On Monday, September 6, 1965, or, in other words, on the Labor Day Holiday, employe Losito, being available and as the regularly assigned occupant of Relief Position No. 2, which provides rest day relief on Position No. 294 on Mondays, was called for the overtime work on Position No. 294 in accordance with the provisions of aforementioned Memorandum of Agreement No. 9.

Monday, September 6, 1965, or, in other words, the Labor Day Holiday, was one of claimant Mueller's rest days, and in view thereof, in view of that set forth in the preceding paragraph and under the provisions of aforementioned Memorandum of Agreement No. 9, there was and is no basis for the instant claim in his behalf.

Attached hereto as Carrier's Exhibits are copies of the following letters:

CARRIER'S EXHIBIT A — Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of January 25, 1966.

CARRIER'S EXHIBIT B — Letter written by Mr. Amour to Mr. Gilligan under date of February 14, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned to Bill Clerk Position No. 294, Wednesday through Saturday, with rest days on Monday and Tuesday. Relief Position No. 2, regularly filled by R. B. Losito, relieves on those two days (and also relieves other positions on Friday, Saturday and Sunday).

Mr. Losito was assigned at his request to vacation relief work, and employe Paul Norris, Jr. was hired to fill Relief Position No. 2 from June 11, 1965, to September 17, 1965. Although Mr. Losito's vacation relief assignment was on Position No. 291 from August 30 to September 17, Carrier used him in Position No. 294 on Labor Day, September 6, making no effort to call either Mr. Norris or Claimant. No claim was filed by Mr. Norris, but Claimant asserts that he had been ready and willing to fill the position on the holiday, and requests pay therefor.

Memorandum of Agreement No. 9 provides:

"If a position is to be filled on a holiday, the regular or relief occupant of the position who would have filled that position on that day, had it not been a holiday, will be used. If the regular occupant is unavailable, the relief occupant of the position will be used, or vice versa."

This provision is directly in point. Thus, the sole question to be determined is whether or not Mr. Losito retained his status as the relief occupant of Position No. 294, or, whether he had lost that status when he left Relief Position No. 2 to fill the vacation relief assignment. It seems obvious on its face that Mr. Losito then possessed a right only to holiday work on Position No. 291 if any were required, since Monday was one of the assigned days of that position which he was filling from August 30 to September 17. Rights to holiday work in Position No. 294 consequently lay either with Claimant, who held that position on the five days exclusive of Monday and

Tuesday, or with Mr. Norris, who was Mr. Losito's replacement in Relief Position No. 2, and thus filed Position No. 294 on Mondays.

Memorandum No. 9 restricts the holiday work in the first instance to the regular or the relief occupant. To hold that Mr. Losito retained his right to the work can be accomplished only by finding that his replacement, Mr. Norris, had none. That is palpably wrong. Since Mr. Norris was unavailable or unwilling to fill the position, then, according to the clearly stated requirement of Memorandum No. 9, the "regular" occupant must be used. Neither Mr. Losito, occupant at the time of a different position, nor any other employ, had a right to Position No. 294 on the holiday so long as either Claimant or Mr. Norris was available.

Since Mr. Norris made no claim, the Agreement requires that Claimant be made whole for his loss.

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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1968.

DISSENT OF CARRIER MEMBERS TO AWARD 16429, DOCKET CL-16494

Pointing to the parties' Memorandum No. 9, quoted in part in the third paragraph of the OPINION OF BOARD, the majority lifts the words "regular * * * occupant" out of context and uses them as the basis for its decision to sustain the claim presented on behalf of E. A. Mueller. In so doing, the majority has committed a serious error, for it is plain to see that the Memorandum, in outlining which employees shall be used to fill a position on a holiday, specifically refers to "the regular * * * occupant of the position who would have filled that position on that day, had it not been a holiday" (Emphasis ours). Claimant E. A. Mueller, the facts of record clearly show,

was the regular occupant of Bill Clerk Position No. 294, with a Wednesday through Sunday workweek; he was not the regular occupant of the position filled in this case, Relief Position No. 2, and would not have filled any position as the regular occupant thereof on the date in question, Monday, September 6, 1965, had it not been a holiday.

The majority, in failing to apply Memorandum No. 9 in accordance with the plain meaning of all its terms, has thus reached a decision which has no sound basis in fact or logic. We dissent to that decision.

C. L. Melberg
R. A. DeRossett
C. H. Manoogian
J. R. Mathieu

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARD 16429, DOCKET CL-16494**

The dissent is but a reiteration of the illogical arguments which were considered and correctly rejected before the Award was written.

Award 16429, Docket CL-16494, is correct in all respects, and the dissent, rather than detracting therefrom, merely affirms the correctness of the Award for all who would read Memorandum No. 9 and the facts of the case.

D. E. Watkins
Labor Member
8-5-68