

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6388) that:

(1) Carrier violated the Clerks' Agreement when it refused to permit A. J. Slaughter to work his regular assignment on February 2, 1967, which was a regular work day and his birthday.

(2) Carrier shall now be required to compensate A. J. Slaughter eight hours at time and one-half rate for February 2, 1967.

EMPLOYES' STATEMENT OF FACTS: Mr. A. J. Slaughter is regularly assigned to position of Expense-Bill Clerk, Agent's Office, Laurel, Mississippi, assigned work days Monday through Friday, holidays excluded, off days Saturday and Sunday.

Thursday, February 2, 1967, was a regular work day of his work week. It was also his birthday.

On Wednesday, February 1, 1967, Agent W. S. Carr instructed Mr. Slaughter not to report for work on Thursday, February 2, 1967, his birthday, advising him the other clerks on duty on February 2, 1967, would make the demurrage checks and perform other duties regularly assigned to Mr. Slaughter as the occupant of the position of Expense-Bill Clerk.

As instructed, Mr. Slaughter did not report for work on February 2, 1967. However, duties regularly assigned to his position were performed on that day by other employees assigned to work that day but who did not ordinarily perform the type of work assigned to the claimant's position. (Employee's Exhibits A, B and C.)

The duties regularly assigned to the Claimant's position of Expense-Bill Clerk are described in Bulletin No. 35, dated March 22, 1965. (Employee's Exhibit D.)

These duties are not assigned by bulletin to any other position in the Agent's Office at Laurel, Mississippi, the duties of those other positions are described in Bulletin No. 33, dated February 23, 1965 (Employees' Exhibit E), Bulletin No. 36, dated March 22, 1965 (Employees' Exhibit F), and Bulletin No. 51, dated June 3, 1965 (Employees' Exhibit G).

Mr. Slaughter's claim for eight hours' pay at the time and one-half rate for Thursday, February 2, 1967, account not being permitted to work his assignment was declined. (Employees' Exhibit H.)

Claim was handled through the regular channels up to and including the highest officer of the Carrier authorized to handle such claims, who has declined payment of same. (Employees' Exhibit I and J.)

There is in effect between the Carrier and this Brotherhood an Agreement, effective November 1, 1950, covering working conditions of the employees, which Agreement has been filed with the National Railroad Adjustment Board, as provided by the Railway Labor Act, as amended, and by this reference is made a part hereof.

The Carrier and this Brotherhood are also parties to the Mediation Agreement dated November 20, 1964, which by this reference is also made a part hereof.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On claim date, Mr. A. J. Slaughter occupied a daily-rated position of Bill Clerk, Laurel, Mississippi Agency. His work days were Mondays through Fridays, holidays excluded. Thursday, February 2, 1967, was claimant's birthday holiday. He was given the day off with pay on that day, pursuant to Section 6(a), Article II - Holidays, of a national agreement which was entered into on November 20, 1964. His claim is for an additional day's pay at the time and one-half rate of the position to which he was assigned, or for a total of the equivalent of two and one-half days' pay for February 2, 1967 — a day on which he performed no service.

The current working agreement (schedule agreement) between the Employees and this Carrier became effective November 1, 1950. Copy is on file with this Board, and same is made a part of this submission by reference.

OPINION OF BOARD: Claimant was regularly assigned as bill clerk at Laurel, Mississippi. His birthday fell on Thursday, February 2, 1967 which was a work day of his work week. Claimant was given his birthday off but because other clerks performed duties of his position on that day, Claimant claims that he should have been called to perform the duties of his position.

From our analysis of the evidence in the record we conclude that duties regularly performed by the Claimant were, on his birthday, performed by clerical employees who did not otherwise perform those duties. In view thereof, we find the claim to be meritorious. See Award 16666 and awards cited therein.

Awards 16453 and 16562 cited in support of the Carrier's position are distinguishable. In those cases there was no proof that work of the employees' positions was performed on their birthdays. The same is true with respect to

Award No. 17 of Public Law Board No. 32. The Agreement was violated and 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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November 1968.