



Award No. 16846
Docket No. CL-17240

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6374) that:

(1) The Carrier violated the Rules Agreement, effective January 1, 1961, particularly Rule 45, when work was required by the Carrier on a holiday for which the employe was not compensated in accordance with the agreement.

(2) The Carrier shall be required to compensate Mr. C. L. Baumbach for eight (8) hours at the time and one-half rate of Position 1410 for October 31, 1966, in addition to any other pay to which he is otherwise entitled for that day.

EMPLOYEES' STATEMENT OF FACTS: This violation occurred in the Operating Department at Lincoln, Nebraska, when Claimant C. L. Baumbach, occupant of Yard Clerk Position No. 1418, with rest days Monday and Tuesday, was required to work eight (8) hours on his birthday, Monday, October 31, 1966, to fill a vacancy on the Night Desk Clerk Position No. 1410.

On Monday, October 31, 1966, a vacancy occurred on Night Desk Clerk Position No. 1410, a seven-day position Friday through Tuesday, rest days Wednesday and Thursday. This position was bulletined on October 25, 1966 under Notice V-92, but there were no bidders for the position. As it was necessary that the position be filled seven days per week, the Carrier was using other qualified employes on their rest days in accordance with Rule 14(e) to fill the position Friday through Tuesday. On the rest days of Position No. 1410, Wednesday and Thursday, Relief Clerk No. 5 filled the assignment.

Mr. Baumbach was the senior qualified employe on his rest day at the facility on October 31, 1966 and he was notified to work the Night Desk Clerk Position No. 1410 on that date. For this service he was compensated under the

provisions of Rule 37, i.e., the rate of Night Desk Clerk Position No. 1410 with a minimum of eight (8) hours at rate of time and one-half.

October 31, 1967 was also Mr. Baumbach's birthday for which the Carrier allowed him an additional day's pay at pro rata rate of the position of Night Desk Clerk, but disallowed his claim for eight (8) hours' pay at time and one-half rate for the work performed on his birthday holiday in addition to the other compensation for which he was entitled to on this date.

CARRIER'S STATEMENT OF FACTS: Claimant C. L. Baumbach was regularly assigned to Yard Clerk Position No. 1418 with Monday and Tuesday rest days. On the claim date, Monday, October 31, 1966, there was a temporary vacancy on Night Desk Clerk Position No. 1410, rate \$22.56 per day, rest days Wednesday and Thursday. Since the Claimant was the only qualified employe available, he was used to fill this vacancy. This date also happened to be the Claimant's birthday-holiday, so he was paid eight hours at the pro rata rate for his birthday and eight hours at the overtime rate for working on his rest day, or a total of 20 hours' pay for the eight hours of service performed. The Organization is claiming an additional eight hours at the overtime rate, or another \$33.84 for a total of \$90.24 for eight hours of service.

The Schedule of Rules Agreement between the parties to this dispute effective January 1, 1961 is on file with the Board and by this reference is made a part of this submission.

OPINION OF BOARD: This case involves the same issue, parties and Agreements as in Award No. 16845. For reasons stated in that Award the instant Claim is 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 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 December 1968.

**CARRIER MEMBERS' DISSENT TO AWARDS 16845, 16846
(DOCKETS CL-17239, CL-17240) (Referee Dorsey)**

The question involved in this case was correctly decided by this Board in Award 15564 (*Lynch*) and that award should have been followed here.

We dissent.

**G. L. Naylor
R. E. Black
W. B. Jones
P. C. Carter
G. C. White**

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARDS 16845 AND 16846**

(DOCKETS CL-17239, CL-17240) (Referee Dorsey)

The Dissenters contend that the decision in Award 15564 (*Lynch*), adopted by this Division on May 12, 1967, should have been followed in Awards 16845 and 16846. They ignore the fact that Award 15564 has been overturned on this property on not only one, but two, occasions, i.e.: Award 15800 (Referee House), adopted September 19, 1967 and Award No. 20 of Public Law Board No. 17 (Referee Bailer), adopted March 8, 1968.

Many disputes on the same issue have been decided by all Divisions of this Board, but we are not aware of any award which follows the erroneous decision rendered in Award 15564, either on this property or any other property where the same or similar basic rules were involved, unless it was decided by the author of that award, resting on his own authority.

Awards 16845 and 16846 correctly interpreted the Agreement and properly followed the long line of prior decisions on the issue.

**C. E. Kief
Labor Member
1-8-69**