

Award No. 16930
Docket No. CL-16890

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6261) that:

(1) Carrier violated the rules of the Clerks' Agreement, as amended and Article II of the National Agreement dated November 20, 1964 when it declined and refuses to pay claimant, Mr. B. E. Gleadhill, for his birthday/holiday June 21, 1966 and punitive time for work performed on that date.

(2) Carrier shall now be required to compensate claimant, Mr. B. E. Gleadhill, \$20.9424 for his birthday/holiday, and an additional amount of \$10.4712 representing the difference between punitive and pro-rata paid him for working thereon.

EMPLOYEES' STATEMENT OF FACTS: Claimant has a service and seniority date of June 17, 1944.

Although Carrier has verbally stated it is not interested in a joint submission, the facts and issue involved are summarized in its letter of October 11, 1966, signed by Mr. W. J. Ahearne, Director Labor Relations and Personnel, the highest official on the property to whom appeals may be made, quoted as follows:

"October 11, 1966

Mr. J. Connor, General Chairman
Brotherhood of Railway and Steamship Clerks
150 Causeway Street, Room 704
Boston, Massachusetts 02114

CLAIM: CL-1022

Dear Sir:

On October 11, 1966, discussion was had regarding claim of B. E. Gleadhill, furloughed store helper from the East Deerfield

Stores Department for a punitive day, plus eight hours' pay for his birthday holiday, account having worked at least eleven days of the thirty calendar days prior to the occurrence of his birthday on June 21, 1966.

Claimant Gleadhill also performs work on the Fitchburg Division Freight Handlers' roster. He worked continuously from April 27 through June 17, 1966, while the regular janitor at Greenfield general office was off account of illness. He was then called to cover a vacation vacancy at the Store Department commencing June 20 through July 1, 1966.

Although Claimant did not perform service in the Stores Department on eleven days of the thirty calendar days preceding his birthday, claim is based on the allegation that the service does not necessarily have to be performed within the seniority district in which the birthday holiday is claimed.

It is Carrier's position that when Claimant Gleadhill was called to work in the Stores Department on June 20, 1966, any other service performed off that seniority district is immaterial in determining his birthday-holiday eligibility.

Claim for an additional four hours for work performed and for an additional eight pro-rata hours for birthday holiday on June 21, 1966, is declined.

Yours very truly,

/s/ W. J. Ahearne
Director Labor
Relations & Personnel"

CARRIER'S STATEMENT OF FACTS: B. E. Gleadhill was furloughed as a Store Helper from the East Deerfield Stores Department. His birthday-holiday occurred on June 21, 1966. While furloughed from the Stores Department, he worked as a janitor from April 27 through June 17, 1966, while the regular janitor at Greenfield, Mass. Superintendent's office was off account of illness. This position belongs to employes on the Freight Handlers' Roster and has no connection whatsoever with the Stores Department employes or rosters. Subsequently he was recalled to the Stores Department to cover a vacation vacancy commencing June 20 and ending on July 1, 1966. His birthday was June 21, 1966.

Claim was declined because the claimant was working in the Stores Department on his birthday, but he had not performed service in that department on eleven of the thirty calendar days preceding his birthday.

OPINION OF BOARD: Claimant in this dispute was other than regularly assigned. He worked continuously from April 27 through June 17, 1966 as janitor at Carrier's Greenfield general office, filling the position while the regular incumbent thereof was off account of illness. He was then called to perform vacation relief in the Stores Department from June 20 through July 1, 1966. He fulfilled the duties of both assignments as required.

Carrier takes the position that Claimant did not perform compensated service in the Stores Department on eleven of the thirty calendar days preceding his birthday; that such service must be performed in the seniority district in which the birthday holiday is claimed; and that service performed off that seniority district cannot be considered in determining his birthday-holiday eligibility for compensation under the provisions of the November 20, 1964 National Agreement. Article II — Holidays, Section 6(d) of the aforesaid Agreement provides in pertinent part as follows:

"(d) Other than regularly assigned employees shall qualify for the additional day off or pay in lieu thereof, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding his birthday, and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding his birthday beginning with the first day of compensated service, provided employment was not terminated prior to his birthday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment, and (3) if on the workday preceding and the workday following the employee's birthday he satisfies one or the other of the following conditions:

- (i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service.

NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

* * * * *

The language is unambiguous. Nowhere do we find therein that such compensated service must be credited to an employee in any one given seniority district, as Carrier contends. There is nothing to indicate in the record before us that Claimant did not meet each and every requirement.

We will sustain the claim. Awards 14364, 14365, 14390, 14431, 15709, 16089, among others.

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 29th day of January 1969.