

Award No. 17050
Docket No. CL-17449

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

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

PORT TERMINAL RAILROAD ASSOCIATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6412) that:

(1) The Association violated the current agreement between the parties effective November 1, 1955, as amended by National Mediation Agreement of November 20, 1964, when it refused to properly compensate Clerk L. B. Scott, Jr., Utility Clerk, Houston, Texas, for work performed on March 22, 1967.

(2) The Association shall now be required to compensate Clerk L. B. Scott, Jr., for 8 hours at the time and one-half rate of position of Crew Clerk for service performed on his birthday, in addition to 8 hours at the time and one-half rate which he received for working on his rest day, March 22, 1967.

EMPLOYEES' STATEMENT OF FACTS: On March 22, 1967, L. B. Scott, Jr., was assigned to the position of Utility Clerk having a workweek of Thursday through Monday, with Tuesday and Wednesday as rest days. Thus, Wednesday, March 22, was a rest day and also a holiday (birthday) for Scott. On this same date the Association deemed it necessary to work an extra crew clerk position during the hours of 3:00 P.M. until 11:00 P.M. Since there were not any clerks on the extra board qualified to work the position, Clerk Scott being the senior available qualified employee was called to work the extra crew clerk position for which he was paid 8 hours at the time and one-half rate for working on his rest day; however, he was not paid for the work which he performed on his birthday holiday. Scott claimed sixteen (16) hours' pay at the time and one-half rate on his time card for the work he performed on March 22. The auditor advised him that he would only be allowed eight (8) hours at the overtime rate for the work he performed on that day, whereupon the auditor was advised that his decision was not acceptable, and the Division Chairman filed formal claim to Superintendent B. A. Fredrickson on April 17, 1967. Mr. Fredrickson declined

the claim under the date of April 27. The claim was processed in the usual manner and the final appeal was taken to Mr. R. W. Best, Manager of Personnel and Labor Relations, who declined it under the date of June 2, 1967. This claim was discussed on several occasions with Mr. Best and in formal conference on June 26 and August 9, 1967, at which times it was again declined. Correspondence passing in respect to the claim is attached hereto as Employees' Exhibits 1 to 9.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Clerk L. B. Scott, Jr., was called to work in line with his seniority on March 22, 1967, for position of Crew Clerk. March 22 was one of his assigned rest days, and also his birthday. The carrier compensated Clerk L. B. Scott, Jr., 8 hours at pro rata rate for his birthday holiday, and, in addition, 8 hours at time and one-half for work performed on his rest day. The Organization is claiming additional payment of 8 hours at time and one-half based on the Agreement of November 20, 1964, establishing birthday holiday. Carrier's Exhibits A through F represent correspondence exchanged in this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 22, 1967, Claimant L. B. Scott worked as a Crew Caller on his rest day, which was also his birthday. Claimant was paid eight (8) hours at pro rata rate for his birthday and eight (8) hours at punitive rate for work performed on his rest day, but denied an additional 8 hours at time and one-half.

The Organization contends that the Agreement allows an employee that works on his rest day 8 hours pay at punitive rate and as a result of working on a holiday-birthday an additional 8 hours at punitive rate, plus 8 hours at straight time for his birthday. The Organization bases its claim on the National Mediation Agreement of November 20, 1964 and Rules 11 (Rest Day) and 13(b) (Holidays) of the Agreement.

In considering all Agreements, the Carrier contends Claimant was properly paid.

The issue arising from this claim has been decided in numerous awards of this Division which sustain Claimant's position.

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 26th day of March 1969.