



**Award No. 17190**

**Docket No. CL-17375**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David H. Brown, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-  
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND  
STATION EMPLOYES**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6351) that:

1. Carrier violated the Clerks' Agreement when it refused to permit extra and furloughed Clerk Lewis Johnson, and extra and furloughed Freight Warehouse Laborers (Stowmen) Walter Dickens, Jr. and Gladies Harrison, St. Louis Terminals Station and Yards seniority roster and district, St. Louis, Missouri, to work on their Birthday holidays, on August 12, 1966, August 9, 1966 and June 6, 1966, respectively, and required employees junior to them in their seniority districts to work on those days, which Carrier action was in violation of Article II, Section 6 of the November 20, 1964 National Mediation Agreement Case Nos. A-7127 and A-7128; and also Rules 14(i), 21, 26 and related rules of the basic Clerks' Agreement.
2. Carrier shall now be required to compensate—
  - (a) Lewis Johnson for 8 hours at time and one-half of the Checker-Stowman rate, amount \$33.45, for August 12, 1966;
  - (b) Walter Dickens, Jr., for 8 hours at time and one-half of the Stowman's rate, amount \$31.47, for August 9, 1966;
  - (c) Gladies Harrison for 8 hours at time and one-half of the Stowman's rate, amount \$31.47, for June 6, 1966.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants in this dispute were extra and furloughed and were therefore unassigned on their Birthday holidays. They did meet the necessary qualifications to make them eligible to receive the pro rata day's pay for their Birthday holiday and the Carrier did pay each of them a pro rata day's pay for their Birthday holiday, but did not permit or require them to work on their Birthday holidays for which the Carrier would have been required to pay them at the punitive rate. Instead, the Carrier utilized junior employees to work on the Birthday holidays of the claimants, as set forth in the following statement:

'For other than regularly assigned employees, if an employee's birthday falls on a day on which he would otherwise be assigned to work, he shall be given the day off and receive eight hours' pay at the pro rata rate of the position which he otherwise should have worked.'

Inasmuch as the claimants were allowed the day off and paid eight hours at the pro rata rate of pay in accordance with the provisions of Article II of the November 20, 1964 Agreement, this claim is without merit or rule support and is respectfully declined.

Yours truly,

/s/ O. B. Sayers

9. Claim was progressed in the proper manner on the property and is properly before your Board.

**OPINION OF BOARD:** Each of the Claimants is an extra furloughed employee who complains that he was not permitted to work on his Birthday Holiday (under the November 20, 1964 National Agreement) alleging that Carrier chose instead to call a junior extra-furloughed employee to work the position.

In numerous cases, we have held that while Carrier may blank a position on the regular incumbent's Birthday Holiday, if the position is worked, the work must be offered to the incumbent. Awards 15398 (House), 15638 (Ives), 15783 (McGovern), and 15911 (McGovern).

Further, in a case squarely in point, we held in Award 15598 (Dorsey) that the rule applied equally to extra employees.

Such authority compels a sustention of this claim.

**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.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.