



Award Number 17513

Docket Number CL-18119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6551) that:

- (a) The Carrier violated the rules of the Clerks' General Agreement and supplements thereto, when on April 24, 1967 after request by H. A. Thompson, it refused to allow him to work on his Birthday Holiday but permitted others inside and outside of his class of service to perform his regular assigned duties.
- (b) H. A. Thompson now be allowed eight hours punitive rate, \$23.57 for April 24, 1967."

EMPLOYES' STATEMENT OF FACTS:

1. At Russell, Kentucky among other positions titled Section Storekeeper, are positions A-5 and A-9. Section Storekeeper A-5 was regularly assigned to Claimant Hubert A. Thompson. The duties of Section Storekeeper A-5 are to have charge of and be responsible for ordering, receiving, accounting for and issuing upon receipt of proper requisitions, the following materials:

Class No. General Description of Material

- 015 Material used in track work such as chain, picks, fencing, shovels, sythes, etc.
- 016 Spark plugs, all types
- 021 Alternator—Lightening arrestors—Signal Equipment
- 022 Radio Equipment
- 030 Concrete, Pipe Flanges and Roofing
- 091 Fuel Meters and Pump Parts
- 093 Turn-table Parts
- 110 Bolts, Nuts and Washers
- 140 Pins and Bushings
- 150 Steel, all kinds
- 180 Draft Gears and Couplers
- 200 Yokes
- 210 Brass Bearings
- 220 Air Brake Parts
- 221 Gauges, Oil Seals, Piston Rings

attached hereto and identified as Carrier's Exhibit "D", confirming such rediscussion.

The Carrier submits that the claimant was properly permitted to observe his Birthday Holiday on April 24, 1967, for which he was compensated one day's pay as Holiday pay, and he is not now entitled to an additional day's pay at the punitive rate under the application of the August 21, 1954 Agreement, as amended by the August 19, 1960 and November 20, 1964 Agreements, or the rules of the General Agreement.

(Exhibits not reproduced)

OPINION OF BOARD: The issue herein is whether or not Claimant's position of Storekeeper A-5 at Russell, Ky. was worked on Claimant's birthday, April 24, 1967, while Claimant was off duty on account of his birthday holiday.

The Organization contends that although Rule 42(b) of the Agreement permits Carrier not to work Claimant's position on his birthday-holiday, nevertheless, if Carrier required that any of the assigned duties of said position be performed on Claimant's birthday-holiday, then Carrier was required by the mandatory provisions of Rule 35(a) of the Agreement to give first preference to Claimant, as the regularly assigned employee, to work the position on his birthday holiday; that this is particularly true in view of paragraph 1 of the Memorandum of Agreement between the parties dated April 19, 1963; that some of the duties of Claimant's position were performed by the holder of the position of Storekeeper A-9 as well as by the A-12, Typist-Clerk and the E-3 Division Storekeeper employee.

Carrier's position is that there were no duties performed by employees either inside or outside of Claimant's class of service that were exclusive to Claimant's said Section Storekeeper position; that Claimant was permitted to take the day off with pay and that he is not entitled to an additional day's pay under the August 21, 1954 Agreement as amended or the rules of the Agreement between the parties hereto; that the duties of Storekeeper A-5 and A-9 are identical and thus it cannot be held that duties performed on said positions are relegated solely to either position; that the holder of Clerk Typist position A-12 performed work on said date that is properly required of said position.

The Organization does not in this instance contest the right of Carrier to blank Claimant's position on his birthday-holiday. It rests its case on the proposition that Claimant's position was worked said date by employees holding other Storekeeper positions in violation of the Agreement.

A close examination of the record shows that the duties of Section Storekeeper A-5 and A-9 positions are identical. Further, petitioner alleges, without corroborating proof, that the holders of Division Storekeeper position E-3 and A-12, Typist-Clerk performed some of the duties of Claimant's position on the date in question. Mere assertions without substantive proof is of no probative value. Claimant in this instance failed to prove that the holders of Storekeeper A-9, Division Storekeeper E-3 and A-12, Typist-Clerk performed work which they were not entitled to perform as part of their regular assignment or performed any duties which were exclusively assigned to Claimant's position.

It was obligatory on petitioner herein to show that his position was worked on his birthday holiday. See also Award Nos. 17057 and 17428. Inasmuch as petitioner failed to sustain said burden of proof, we must deny the 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1969.