



Award Number 17673

Docket Number CL-18125

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6590) that

1. Carrier violated the Clerks Agreement when it failed to call Messenger Clerk, Mr. L. M. Hettenhouser to perform service on his regular assignment on his birthday-holiday.
2. Messenger Clerk L. M. Hettenhouser shall now be allowed eight hours pay at the time and one-half rate for December 4, 1967.

EMPLOYES' STATEMENT OF FACTS: Claimant occupied a regular assignment in the Assistant Controller's Office, Hagerstown, Maryland, with a work week of Monday through Friday, with rest days Saturday and Sunday.

On December 4, 1967 the carrier failed to call the claimant on his birthday to perform service on his regular assignment.

Under the date of January 17, 1968 claim was filed by the Organization with the Manager of Disbursement Accounting, Mr. R. S. Martin, see Employees' Exhibit "A".

The Claim was denied by Mr. R. S. Martin in his letter to the Organization dated January 25, 1968, see EMPLOYES' EXHIBIT "B".

In letter dated March 16, 1968, the Organization appealed the decision to the Assistant Controller, Mr. E. G. Reese, see EMPLOYES' EXHIBIT "C".

Mr. Reese denied the claim and so advised the Organization in his letter to it dated March 29, 1968, see EMPLOYES' EXHIBIT "D".

The Organization appealed to the Controller, Mr. E. P. Holland, under date of April 6, 1968, see EMPLOYES' EXHIBIT "E".

Mr. Holland also denied the claim and so advised the Organization in his letter dated April 11, 1968, see EMPLOYES' EXHIBIT "F".

The matter was then appealed to the highest designated officer on the property to handle grievances, Manager of Labor Relations, Mr. F. B. Plummer, see EMPLOYES' EXHIBIT "G", letter dated April 13, 1968.

His declination is set forth in his letter to the Organization, see **EMPLOYEES' EXHIBIT "H"**.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: The claimant was assigned in the Disbursements Division of the Accounting Department at Hagerstown, Maryland. There are 40 clerical and 7 partially excepted positions in this office, and the claimant occupied the position of Messenger Clerk. This position is advertised with the basic duties, "Handle and distribute mail and general office work." A preponderance of his work is general office work, usually in the Accounts Payable and Accounts Receivable Bureau. A copy of Bulletin No. 1284 dated December 27, 1966 advertising the position and Bulletin No. 1285 dated January 5, 1967 awarding it to Mr. Hettenhouser are attached as Carrier's Exhibits "A" and "B."

December 4, 1967 was the claimant's birthday and in accordance with past procedure under the agreement, he was granted the day off with pay. His position was not filled and any work of the position which had to be performed on that day was done by other clerks in the office. Claim is made that the claimant should have worked on his birthday at time and one-half rate instead of blanking the position on that day.

(Exhibits Not Reproduced)

OPINION OF BOARD: On December 4, 1967, Claimant celebrated his birthday and was granted the day off with pay. His position was not filled, but any work of Claimant's position which had to be performed on that day was performed by other Clerks in the office. The Organization contends that Claimant's position was not "blanked" on the date in issue, but that the work of Claimant was actually performed. The Organization further contends that "distributing" the work of Claimant among remaining Clerks does not constitute "blanking" the position; and that since Claimant's work was performed on his birthday-holiday, he (Claimant) had a contractual right to be called on his assignment.

The contentions of the Organization are not well taken in this instance. In order to sustain this claim, the Organization must prove that the work performed was exclusive to the position of this Claimant. This, the Organization has failed to do. The Organization failed to set out the particular work; who performed the work; and when such work was performed. This Board finds that the performance of the work in this instance could properly be required of the other employees on duty in the same office. This same question has been determined in Award 14151 (Coburn) on this property, which involved the claim of a Yard Clerk whose duties were performed by a Yard Clerk-Caller while Claimant was celebrating one of the national holidays enumerated and designated a holiday under the National Holiday Agreement of August 21, 1954. Award 14151 gives the Carrier the right to reduce the size of its work force and have certain work of the blanked positions performed by other clerks in the office.

Similar claims concerning work performed on Claimants' Birthday-Holiday have been denied in Awards 17057 by this referee, 17428 (Jones), 15731 (Ives), 16274 (Zack) and many others.

Also, Carrier's Exhibits "F" and "H" bear out the fact that past practice reveals that the Accounting Department has consistently allowed its employees the day off on their birthdays and the work of the birthday cele-

brant which can not be deferred on such day is performed by other clerks in the office. This practice has also been the rule for other reasons such as vacation and sickness as well as instances involving birthday-holidays.

For the foregoing reasons, this claim will be denied.

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 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 22nd day of January 1970.