



Award No. 18700
Docket No. CL-19056

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6909) that:

(1) The Carrier violated the provisions of the Agreement between the parties of October 1, 1942, as amended and revised, and the National Mediation Agreement of November 20, 1964, when it denied Gateman J. K. Blakey the right to work on his Birthday Holiday, April 27, 1969, which was a regularly assigned work day of his position.

(2) The Carrier shall be required to pay Claimant J. K. Blakey one day's pay at time and one-half the rate of his regular position for April 27, 1969, in addition to the compensation already paid.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. J. K. Blakey, on the claim date held a regular position as a Gateman, assigned to work 3:59 P.M. to 11:59 A.M., Friday through Tuesday with Wednesday and Thursday as assigned days of rest. The position of Gateman is Seniority Class two, Passenger Department, under the Agreement of October 1, 1961, as revised and amended.

Sunday, April 27, 1969 was an assigned work day and also the Birthday Holiday of Claimant. Claimant was instructed to take the holiday off and was paid pro rata for the day.

An Usher, Mr. G. A. Sprenger, covered by the Agreement effective April 5, 1969, was used to perform work on the assignment of Claimant, and was paid a special rate as an "extra" Gateman for a period of four (4) hours for performing such work.

The Employees filed claim on June 18, 1969 (Employees' Exhibit No. 1) contending principally that since work was performed on Claimant's assignment, Claimant had prior rights to such work ahead of any other employees, at the holiday rate.

\$1.00 per hour, on a minute basis, with a minimum payment for thirty minutes during any one tour of duty as usher."

Final conference on the claim was held on August 27, 1970 with no change in the position of the respective parties thereof creating a dispute that the parties have been unable to settle on the property and is herewith submitted by the Employees to the Third Division, National Railroad Adjustment Board, in accordance with the Railway Labor Act as amended for consideration and award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant J. K. Blakey held a regular gateman position, 3:59 P. M. to 11:59 P. M., with rest days Wednesday and Thursday. On Sunday, April 27, 1969, Mr. Blakey's Birthday, his position was blanked, following proper notice, and Mr. Blakey was not required to work on that date.

Claimant Blakey qualified under Rule 43(b) for birthday holiday pay and accordingly was paid one basic day's pay for the holiday.

Claim was submitted on June 18, 1969, for an additional day at punitive rate account not permitted to work on his birthday.

The claim was handled in the usual manner and denied by the final appeals officer on March 6, 1970.

Attached as Carrier's Exhibits 1, 2 and 3, are copies of the initial claim dated June 18, 1969, appeal to Supt. Apple dated October 3, 1969, and final appeal by General Chairman Graham on January 16, 1970.

Attached as Exhibit 4 is copy of letter dated March 6, 1970, which was final denial of the claim.

An agreement between the Carrier and the Clerks' Organization bearing an effective date of October 1, 1942 as reprinted and revised June 1, 1961, is on file with your Board and by this reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant herein, J. K. Blakey, is the regularly assigned occupant of the position of Gateman, assigned Friday through Tuesday 3:59 P. M. to 11:59 A. M., with Passenger Department Class Two Seniority. His Birthday fell on Sunday, April 27, 1969, an assigned work day, but he was instructed to take the day off and was paid therefor at the pro rata rate. Claimant contends that because an Usher was utilized to perform the duties of his position, he should have been permitted to work his position on his Birthday and be compensated at the rate of time and one-half in addition to the straight time rate already received under Article II — Holidays, Section 6 (a) of the November 20, 1964 National Agreement.

Carrier's Stationmaster denied the claim on the basis that Claimant's position of Gateman was blanked; however, he further stated in his letter of declination dated August 12, 1969:

"Usher, G. A. Sprenger signed the extra gate pay roll sheet on April 27, 1969, 5:29 P. M. to 9:29 P. M. a total of four (4) hours. Mr. Sprenger was paid extra gate pay for this time. However, this does not guarantee that Mr. Sprenger actually performed four (4) hours gate and escalator duties exclusively, on a minute basis in accordance with Appendix four (4) of the Agreement of April 5, 1939 as amended and revised."

Having admitted to the utilization of an Usher to perform duties of Gateman during the latter's regularly assigned tour of duty, we find that Carrier violated the Agreement and will sustain the claim. See Awards 15598, 15599 and 15694 on this property. Also see Awards 15638, 15227, 15783, 15911, 16666, 16811, 16856, 17088 and 17842, among many on the identical issue.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1971.