

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19827
Docket Number CL-19973

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employee

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7218)
that:

(1) Carrier violated the Agreements between the parties when it refused or failed to permit E. W. Jarvis to work his regular assignment on April 29, 1971, which was a regular work day and his birthday,

(2) Carrier shall now be required to compensate E. W. Jarvis for eight hours' pay at the overtime rate of pay of the Chief Clerk Position at Joplin, Missouri, for April 29, 1971, in addition to compensation already received.

OPINION OF BOARD: The issue here is whether Claimant's regular position was blanked on his birthday which fell on a day which was part of his regularly assigned work week. If the position was blanked, his claim will be denied; if not, he is entitled to a sustaining award.

Claimant was regularly assigned to the Chief Clerk Position, Joplin, Missouri, 8:00 a.m. to 5:00 p.m., exclusive of one hour for lunch, with rest days 3 Saturday and Sunday. On Thursday, April 29, 1971, which was his birthday holiday, Claimant was granted the day off and allowed eight hours pay at the pro rata rate. In the same day the Carrier established for one day an extra position, 7:59 a.m. to 4:59 p.m., exclusive of one hour for lunch, which was worked by an employee assigned to the Rotating Extra Board at Joplin. The extra position was shown on the payroll as "General Clerk" and the extra Board employee who worked it was paid the Chief Clerk rate, which is the highest clerical rate at Joplin.

In urging that the Claimant's position was not blanked, the Petitioner notes that the extra position was established for only one day; that such position was worked at the Chief Clerk's rate of pay; that the extra board employee performed the duties assigned to the Chief Clerk, including but not confined to the handling of notifications, switch Lists, MICS reports and other work; and that the extra position differed from Claimant's hours by only one minute. For its part, the Carrier says the Claimant's position was blanked in accordance with well-established practice dating back more than 30 years; that the extra employee performed some of the duties regularly assigned to Claimant's position, but that there

had been no showing that such duties were exclusively assigned to Claimant; that the primary duty of the Chief Clerk position, supervising the **Joplin** office, was performed on the claim date by the Trainmaster-General Agent; that, if the rate of Chief Clerk was paid the extra employee, this was an error which could be corrected; and that other clerical positions worked on the claim date also differed from the Claimant's hours by only one minute.

In studying this record we have carefully considered the Carrier's contentions and evidence, especially the extra employee's non-performance of supervisory duties. On the whole record, however, we are more impressed with Petitioner's evidence, especially the one day duration of the General Clerk position, the Carrier's admission that the extra employee performed some of the duties of Claimant's position, and the payment of the Chief Clerk rate for the day's work. Consequently, we find that a preponderance of the evidence shows that Claimant's position was not in fact blanked on the claim date, but instead, was **worked** by the extra board employee. We shall sustain 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 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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.