

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23450**
Docket Number **CL-23338**

John B. **LaRocco**, Referee

PARTIES TO DISPUTE: { (Brotherhood of **Railway**, Airline and Steamship Clerks,
Freight Handlers, Express and Station **Employees**
Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood (GL-8961) that:

CLAIM NO. 1 (File **Balt.-2061**), Carrier file CG9262)

- (a) The Carrier violated terms of the Clerks General Agreement, October 28, 1974, when they charged Mr. Bernard T. Kerrigan with a days vacation and his holiday pay is to be computed into his monthly rate, and
- (b) Mr. Bernard T. Kerrigan, incumbent of position E-23, Debt. Serv. Clerk, rats \$1277.21 Per month should now be compensated for the one day vacation charged against him for October **28**, 1974, or allowed **8** hours at the pro rata rate of \$1277.21 per month.

CLAIM NO. 2 (File **Balt.-2091**, Carrier file CG9295)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Geraldine S. **Bonnucelli** during the month of Dec. 1974. and
- (b) The Carrier should now recompute Geraldine S. **Bonnucelli's** pay for Dec. 1974 and allow her \$56.08 in addition to any other pay due her for this period.

CIAIM NO. 3 (File **Balt.-2092, Carrier** file **CG-9296**)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay **LeRoy** C. Behrens during the month of Dec. 1974, and
- (b) The Carrier should now recompute **LeRoy** C. Behreas pay for Dec. 1974 and allow him \$56.88 in addition to any other pay **due** him for this period.

CIAIM NO. 4 (File **Balt.-2093, Carrier** file CG-9297)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Robert **J. Bonnucelli** during the month of Dec. 1974, end
- (b) The Carrier should now recompute Robert J. **Bonnucelli's** pay for Dec. 1974 and allow him \$58.70 in addition to any other psy due him for this period.

CIAIM NO. 5 (File **Balt.-2094, Carrier** file CG9298)

- (a) The Carrier violated the **Clerical Agreement** of the **BRAC** when **they** did **not** properly pay George **J.** Wilhelm during the **month** of Dec. 1974, and
- (b) The Carrier should now recompute George **J.** Wilhelm's pay for Dec. 1974 and **allow** him \$56.70 in addition to any other pay due him for this period.

CIAIM NO. 6 (File **Bslt.-2095, Carrier** file **CG-9299**)

- (a) **The Carrier violated** the Clerical **Agreement when** they did not properly pay Robert L. **Taffe** during the month of **Dec.** 1974.
- (b) The **Carrier** should now recompute pay for **Dec.** 1974, and allow him **\$58.70 in** addition to any other pay due him for this period.

CIAIM NO. 7 (File **Bait.-2096, Carrier** file **CG-9300**)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Norman W. Stewart during the month of Dec. 1974,
- (b) The Carrier should now recompute **Norman W. Stewarts** psy for **Dec.** 1974 and allow him \$59.60 in addition to any other pay due him for this period.

CLAIM NO. 8 (File **Balt.-2097**, Carrier file CC-9301)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Doris A. Eldridge during the month of Dec. 1974,
- (b) The Carrier should now recompute Doris A. **Eldridge's** pay for Dec. 1974 and allow her \$56.87 in addition to any other pay due her for this period.

CLAIM NO. 9 (File **Balt.-2098**, Carrier file CC-9302)

- (a) The Carrier violated the Clerical Agreement **when** they did not properly pay Carmelo **J.** Liberto during the month of December 1974.
- (b) The Carrier should now recompute **Carmelo** J. Liberto's pay for December 1974 and **allow** him \$58.70 in addition to any other pay due him for this period.

CLAIM NO. 10 (File **Balt.-2099**, Carrier file **CG-9303**)

- (a) The Carrier violated the Clerical Agreement when they did **not** properly pay Joseph F. Ebert during the month of Dec. 1974, and
- (b) The Carrier should now recompute Mr. Joseph F. **Ebert's** pay for Dec. 1974 and now allow him \$58.70 in addition to any other pay due him for **this** period.

CLAIM NO. 11 (File **Balt.-2100**, Carrier file CG-9304)

- (a) The Carrier violated the Clerical **Agreement** when they did not properly pay Marjorie E. Branch during the month of Dec. 1974.
- (b) The Carrier should now recompute Marjorie E. Branch's pay for Dec. 1974 and allow her \$51.24 in addition to any other pay due her for this period.

CLAIM NO. 12 (File **Balt.-2211**, Carrier file CG-10075)

- (a) The Carrier violated the Clerical Agreement by not paying W. E. **Harrigan** properly for the **month** of July, 1975, and
- (b) The Carrier should now recompute W. E. Harrigan's pay for July, 1975 and allow him \$60.53 in addition to any other pay due him for this period.

CLAIM NO. 13 (File **Balt.-2257**, Carrier file CG-10430)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay George J. Wilhelm during the month of December, 1975.
- (b) The Carrier should now recompute George J. Wilhelm's pay for December, 1975 and **allow** him \$64.72 in addition to any other pay due him for this period.

CLAIM NO. 14 (File **Balt.-2258**, Carrier file **CG-10431**)

- (a) The Carrier violated the Clerical **Agreement** when they did not properly pay Joseph F. Ebert during the month **of Dec.** 1975.
- (b) The Carrier should **now** recompute Joseph F. **Ebert's** pay for December 1975 and allow him \$64.72 per addition to any other pay due him for this period.

CLAIM NO. 15 (File **Bait.-2259**, Carrier file CG-10432)

- (a) The Carrier violated the Clerical **Agreement** when they did not properly pay Robert J. **Bonuccelli** during the month of December, 1975.
- (b) The Carrier should now recompute Robert J. **Bonuccelli**, pay for December, 1975 and allow him \$64.72 in addition to any other pay due him for this period.

CLAIM NO. 16 (File **Balt.-2260**, Carrier file CG-10433)

- (a) The Carrier violated the Clerical **Agreement** when they did not properly pay R. **E.** Sutherland during **the** month of December, 1975.
- (b) The Carrier should now recompute R. B. Sutherland pay for Dec. 1975 and allow him \$62.70 in addition to any other pay due him for this period.

CLAIM NO. 17 (File **Bait.-2261**, Carrier file **CG-10434**)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Edward M. **Keiser** during the month of Dec. 1975, and
- (b) The Carrier should now recompute Edward M. **Keiser's** pay for December 1975, and allow him \$69.92 in addition to any other pay due him for this period.

CLAIM NO. 18 (File **Balt.-2262**, Carrier file CG-10435)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Robert H. Powers during the month of December, 1975.
- (b) The Carrier should now recompute Robert **H.** Powers pay for **Dec.** 1975 and allow him \$64.72 in addition to any other pay due him for this period.

CLAM NO. 19 (File Bait.-2263, Carrier file CG-10436)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Ms. Doris A. Rldridga during the **month** of December, 1975.
- (b) The Carrier should now recompute Ms. Doris **A. Eldridge** pay for December, 1975 and allow her \$62.71. in addition to any other pay due her for this period.

CLAIM NO. 20 (File **Balt.-2266**, Carrier file CG-10443)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Danny L. Smith during the month of December, 1975.
- (b) The Carrier should now recompute Danny L. Smith's pay for December 1975 and allow him \$73.80 in addition to any other pay due him for this period.

CIAIM NO. 21 (File **Balt.-2267**, Carrier file CG-10444)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay Norman W. Stewart **during the** month of December, 1975.
- (b) The Carrier should now recompute Norman W. Stewarts' pay for December 1975 and allow him \$65.71 in addition to any other pay due him for this period.

CIAIM NO. 22 (File **Balt.-2541**, Carrier file CC-11435)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay R. H. Powers during the month **of July** 1976.
- (b) The Carrier should now recompute R. **H. Powers** pay for July 1976 and allow him \$72.10 in addition to any other pay due him for this period.

CLAIM NO. 23 (File **Balt.-2561**, Carrier file CG-11708)

- (a) The Carrier. violated **the** Clerical **Agreement** when they did not properly pay James G. Rather during **the** month of September, 1976.
- (b) The Carrier should **now** recompute **James** G. Rather's pay for September, 1976 and allow him \$75.17 in addition to any other pay due him for this period.

CLAIM NO. 24 (File **Balt.-2566**, Carrier file CG-11764)

- (a) The Carrier violated the Clerical **Agreement** when **they** did **not** properly pay John McGee during **the** month of September, 1976.
- (b) The **Carrier should now** recompute John McGee's pay for September 1976 and allow him \$76.14 in addition to **any** other pay due him for this period.

CLAIM NO. 25 (File **Balt.-2575**, Carrier file CC-11840)

- (a) The Carrier violated the Clerical Agreement when **they** did not properly pay L. E. **King** during the **month** of September 1976.
- (b) The Carrier should now recompute **L.E.** King's pay for September 1976 and allow him \$72.10 in addition **to any other** pay due him for this period.

CLAIM NO. 26 (File **Balt.-2576**, Carrier file CG-11841)

- (a) The Carrier violated **the** Clerical **Agreement** when they did **not** properly pay E. P. Kipps during the **month** of September 1976.
- (b) The Carrier should now recompute E. P. Kipps' pay for September 1976 and allow him \$73.19 in **addition** to any **other pay** due him for this period.

CLAIM NO. 27 (File **Balt.-2577**, Carrier file CG-11842)

- (a) The Carrier violated **the** Clerical Agreement when they did **not** properly pay Ann R. King during the month **of** September 1976.
- (b) The Carrier should now recompute Ann R. King's pay for September 1976 and allow **her \$69.93** in addition **to** any other pay due her for **this** period.

CLAIM NO. 28 (File **Balt.-2583**, Carrier file CC-11845)

- (a) The **Carrier violated** the Clerical Agreement when they did not properly pay John G. **Baublitz, Jr.**, during the month of November, 1976
- (b) The Carrier shall **now** recompute John G. **Baublitz's** pay for November, 1976 and **allow** him \$169.62 in addition to any other pay due him for this period.

CLAIM NO. 29 (File **Balt.-2602**, Carrier file CG-11946)

- (a) The Carrier violated the Clerical **Agreement** and others when they did not properly compensate Mr. G. W. Ball ID-2154811 during the month of Dec. 1976, and
- (b) The Carrier should **now** recompute G. W. Balls wages for the last week of Dec. 1976 and **the** first week of Jan. 1977 to include Dec. 25, 1976 **Xmas** and now allow him one (1) day at the rate of \$79.96 in addition to any other earnings due him for this period.

CLAIM NO. 30 (File CC-194, Carrier file .CG-11946)

- (a) The Carrier violated the Clerical Agreement **when** they did **not** properly pay Howard E. **Hern** during the month of September 1976.
- (b) The Carrier should **now** recompute Howard E. **Hern's** pay for September 1976 and allow him \$76. **15** in addition to any other pay due him for this period.

CLAIM NO. 31 (File CC-195, Carrier file CC-11780)

- (a) The Carrier violated the Clerical Agreement when they did not properly pay C. O. Reynolds during **the month** of **Nov.**, 1976.
- (b) The Carrier should now recompute C. O. Reynolds pay for Nov. 1976 and allow him \$94.70 in addition to any other pay due him for this period.

CLAIM NO. 32 (File CC-196, Carrier file CG-11781)

- (a) The Carrier violated the **Clerical Agreement** when they did not properly pay John **Mathias, Jr.**, during **the month** of Sept. 1976.
- (b) The Carrier should now re-compute John Mathias, Jr., pay for Sept. 1976 and **allow** him \$78.12 in addition to any other pay due him for this period.

CLAIM NO. 33 (File CC-197, Carrier file CG-11782)

- (a) The Carrier violated the **Clerical** Agreement when they did **not** properly pay W. D. Nelson during the month of Nov., **1976**.
- (b) The Carrier should nw recompute W. **D.** Nelson's pay for Nov. 1976 and **allow** him \$79.96 in addition to any other pay due him for this period.

CLAIM NO. 34 (File CC-198, Carrier file CG-11870)

- (a) The Carrier violated the Clerical **Agreement** and-others when they did not properly compensate Mr. W. T. **Clements** during the month of Dec. 1976
- (b) The **Carrier** should now recompute Mr. W. T. **Clements** wages for Dec. 24 and Dec. 25, 1976 and now **allow** him 8148.45 **in** addition to any other **pay due** him for this pay period.

CLAIM NO. 35 (File CC-199. Carrier file CG-11871)

- (a) The Carrier violated the Clerical Agreement-and **others** when they did not properly compensate Mr. C. O. Reynolds during the month of Dec. 1976.
- (b) The Carrier should nw recompute Mr. C. O. Reynolds wages for Dec. 24 end Dec. 25, 1976 and nw allow **him** \$148.45 in **addition** to any other pay due Mr. **Reynolds** for this **pay** period;

CLAIM NO. 36 (File CLIC- 176, Carrier file CG-11947)

- (a) The Carrier violated the Clerical **Agreement** when they did not properly pay **William Martin** during the **month** of Dec., 1976.
- (b) The Carrier should **now recompute** William Martins **pay** for Dec., 1976, and **allow** him \$152.40 in addition to any **other** pay **due him** for this period.

CLAIM NO. 37 (File CLIC-177, Carrier file X-12868)

- (a) The Carrier violated **terms** of the BBAC **Clerical** Agreement end others when they did not properly **compensate** Mr. D. L. Darling for two **(2) days** es is provided for in Article **1, Para. E** and **F** of the BRAC rules, and
- (b) Mr. D. L. Darling, incumbent of position E-3 Supervisor, rate \$1619.21 per **month** should **now** be **allowed** two (2) additional **days** vacation or compensation in lieu of because of this violation based on his monthly rate of \$1619.21 per month.

CLAIM NO. 38 (File CLIC-181, Carrier file CG-12265)

- (a) The Carrier violated the **Clerical** Agreement when they did not properly pay Mr. P. **K.**O'Donnell during the month of Dec. 1976.
- (b) The Carrier should **now** recompute Mr. **O'Donnells** pay for December 1976 and **allow** him \$75.12 in addition to any other pay due him for this period.

CLAIM NO. 39 (File **504-2780**, Carrier file CG-12581)

- (a) The Carrier violated the Clerks' Agreement when they did not properly pay **J. D. Myers** during the month of April, 1977.
- (b) The Carrier shall now recompute **J. D. Myers'** pay for April, 1977 and allow him \$82.11 in addition to any other pay due him for this period.

CLAIM NO. 40 (File 666-454, Carrier file CG-9519)

- (a) That **the Carrier** violated the terms of the General Agreement and Memoranda **thereto, when** for the pay period of December 14 through December 27, 1974, which was received on January 10, 1975, it failed and refused to adequately compensate Clerk, **J. J. Heiert**, the incumbent of the Position of **Division Storekeeper, CE-1, Rate** 1101.27 at Stevens, Ky. and,
- (b) That the Carrier further violated the Agreement by failing to adjust **this matter** during the pay period of December 28, **1974 through** January **10**, 1975, which was received on January 24, 1975, and
- (c) That the Carrier shall now arrange to allow Clerk **Heiert** one day's pay at the daily rate of \$52.45 in addition to all other earnings, which is **the** amount he would have earned had **he been** properly compensated under the terms of the Agreement.

CLAIM NO. 41 (File Chgo.-666, Carrier file CG12173)

- (a) The Carrier violated the Clerks' Agreement when they did not properly pay Patrick Joyce during the **month** of December, 1976.
- (b) The Carrier shall now recompute **Patrick** Joyce's pay for December, 1976 and allow him one (1) **day**; pay at the rate of \$1438.07 per month in addition to any other pay due him for this period.

CLAIM NO. 42 (File RV-820, Carrier file CG-9293)

- (a) The Carrier violated the Clerks' Agreement when they did not properly pay Harold L. Williams during the months of December 1972, November 1973, December 1973, and September 1974.
- (b) **The** Carrier shall now recompute **Harold** L. Williams' pay and allow **him** \$47.19 for December 1972, \$47.21 for November 1973, \$49.45 for December 1973 and \$51.44 for September 1974.

CLAIM NO. 43 (File 504-2824, Carrier file CG-13387)

- (a) The Carrier violated the Clerks' Agreement when it failed to properly compensate G. D. **Hawk** for the month of **December**, 1977.
- (b) That the Carrier shall now recompute G. D. Hawk's pay for December, 1977 and allow him an **additional** \$143.31 in addition to other pay for this period.

CLAIM NO. 44 (File **Balt.-3156**, Carrier file CG14388)

- (a) **The** Carrier violated the Clerks' Agreement when they did not properly pay J. D. **Iden** during the month of Nov., 1978.
- (b) The Carrier should now recompute J. D. **Idens** pay for Nov., 1978 and allow **him** \$79.18 in addition to any other pay due him for this period.

OPINION OF BOARD: This case consists of a group of forty-four claims brought by **monthly** rated employees under the applicable **agreements** in effect between the Organization and the Carrier. Each Claimant is asking for one or more days pay pro rated from the monthly rate **for** vacation pay when a holiday fell within the Claimant's **vacation period** between **1974** and **1978**.

The facts are not in dispute. **When** a holiday occurred during a **Claimant's** vacation period, the Carrier included the holiday in the Claimants' total **number** of vacation days. The Claimants received their usual total monthly salary. In **some** instances, the Carrier computed their **salary** payments by using the number of work days plus the holiday. At other times, the Carrier computed their twice monthly **salary** payments by using only the number of working days. Regardless of the method of computation, the Carrier paid the Claimants their total monthly salary due under the agreement. Holiday **pay** is already included in the Claimants salary. The issue is whether a **Claimant** is entitled to an additional day's **pay** for a holiday which is also counted as a vacation day when a holiday falls within the Claimant's **vacation period**. If an additional day of pay is due, each Claimant would be receiving more than his monthly salary.

We recently considered this identical issue based on **similar** facts

between **these same** parties in Third Division Award No. 22634 (Sickles) where we found that **under** the September 1, 1949 Agreement, the Claimant was entitled to **1/21** of his monthly salary (since the particular month involved contained twenty-one working days). The Carrier concedes that Award 22634 concerned a **claim** identical to the forty-four claims herein but argues that the award was palpably erroneous and should not control the disposition of these claims.

In order to bring predictability to the relationship between the Carrier and its employees, we are bound by precedent interpreting the applicable agreements unless the challenging party demonstrates that the precedent was palpably erroneous. Third Division Awards No. 4788 (Robertson); No. 11480 (Hall); No. 15740 (Kenan) and NO. 22038 (Roukis). Therefore the burden is on the Carrier to **show** that Award 22634 was an obvious error and if the Carrier **does** not sustain its burden, then Award 22634 fixed the rights of the parties in this controversy. Third Division Award No. 7252 (wyckoff).

In support of its **argument**, the Carrier essentially argues that Award No. 22634 lacks a firm **foundation** because **Article II** of the 1954 **National Vacation Agreement** expressly states that holidays falling during an **employee's vacation** period should be counted as work days. Also, according to the Carrier, each Claimant received his full **monthly** salary and there is no contract provision justifying an additional day's pay over and above the monthly rate.

The Organization urges us to affirm Award No. 22634 not only because we have an obligation to follow precedent under the doctrines of res judicata and stare decisis but also because the September 1, 1949 Agreement is an **adequate justification** for the decision. Article I, paragraphs (a) and (e) refer to vacation days as work days which implies that holidays should be excluded. In addition, Sections Three and Four of that Agreement provides for the computation of pay based only on the number of work days in a given month implying, as we said in Award No. 22634, that the **formula** creates a "... basis for payment and there may very well be a monthly fluctuation." Furthermore, the Organization contends that pursuant to Paragraph Seven of the 1949 Agreement, a monthly rated employee shall not receive any less compensation during the year than if he had been paid on a daily basis. A daily rated **employee** would have been paid for both the holiday and vacation day or not charged with a vacation day for a holiday falling within his vacation period.

After carefully considering all its arguments, we do not concur with the Carrier that Award No. 22634 is palpably erroneous. The Carrier places **primary reliance** on Article II of the 1954 National Vacation Agreement which we note was cancelled by a subsequent agreement. Though parts of Article II are currently incorporated into Article III of the 1972 Agreement, they deal with extensions of the vacation period which are not at issue here. Thus, we must look, as we did in Award No. 22634, to the 1949 Agreement. Monthly rated employees would be in a disadvantageous position when compared to daily rated employees unless they were compensated **for** a vacation day which was **also** a holiday. Also, the computation formula does not preclude a monthly **rated employee** from receiving more than his **monthly** salary during a given month. ~~Because~~ Award No. 22634 is within the realm of reasonableness, we are **bound** to follow that precedent. As we ruled in Award No. 22634, our **decision is** limited to this property.

To avoid confusion ~~regarding~~ our remedy, the Claimants in each of the forty-four claim shall be paid one additional day at the appropriate pro rata rate for each holiday included as a "vacation day". On this property, holidays are not to be included as "work days" in determining the number of "work days" in a month.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of ~~hearing~~ thereon, and upon the whole record ~~and~~ all the evidence, finds ~~and~~ holds:

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

Claims are sustained in accordance vlt~~h~~ **the Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

