



Award No. 15722
Docket No. CL-16214

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5971) that:

(1) Carrier violated the Clerks' Rules Agreement at Deer Lodge, Montana when it failed and refused to allow overtime payment for the Birthday Holiday of employe O. E. Lake.

(2) Carrier shall now be required to compensate employe O. E. Lake for eight (8) hours at the overtime rate of PEX Steno-Clerk Position No. 7407 for May 27, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employe O. E. Lake is the regularly assigned occupant of PBX Steno-Clerk Position No. 7407 at Deer Lodge, Montana. Position No. 7407 is assigned from 8 A.M. to 5 P.M., Monday through Friday, with Saturday and Sunday rest days.

Thursday, May 27, 1965, which was one of employe Lake's vacation days, was also her Birthday and, therefore, a Holiday as provided in Article II of the National Agreement of November 20, 1964. Consequently, as provided in Section 3 of Article I of the Agreement of August 21, 1954, Thursday, May 27th, was considered as a work day of employe Lake's vacation period. However, Mrs. Lake's Position No. 7407 was filled on Thursday, May 27, 1965.

Time slip claiming eight hours' vacation payment at the straight time rate and eight hours at the time and one-half rate account of her position being worked was filed by employe Lake for Thursday, May 27, 1965.

The time slip was declined by Superintendent M. T. Sevedge in his letter to Mrs. Lake dated June 8, 1965, copy of which is submitted as Employes' Exhibit A, and only eight hours' vacation pay at the straight time rate was allowed Mrs. Lake for May 27th.

Claim was appealed to Mr. S. W. Amour, Assistant to Vice President, under date of June 28, 1965, and was declined by him on September 14, 1965.

Conference has been held thereon and no settlement reached.

ration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

claimant Lake's May 27, 1965 birthday-holiday was considered as a day of vacation, and she was allowed for that day 8 hours' pay at the straight time rate, the same as she was allowed for each of the other nine (9) days of her vacation.

Attached hereto as additional Carrier's Exhibits are copies of the following letters:

Carrier's Exhibit D -- Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. C. Hopper, Acting General Chairman, under date of September 14, 1965.

Carrier's Exhibit E -- Letter written by Mr. Amour to Mr. H. V. Gilligan, General Chairman, under date of February 17, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: The question at issue in this case is the proper payment due Claimant for her birthday, which fell on a workday of her workweek, while she was on vacation. The record indicates that Claimant's position was filled while she was on vacation, including the day which was her birthday. As vacation pay for her birthday Carrier paid her eight hours at the straight time rate of pay and declined the claim for eight hours at the time and one-half rate in addition to what she had already been paid.

Carrier properly considered Claimant's birthday as a workday of the period for which she was entitled to vacation pursuant to Article I, Section 3, of the August 21, 1954 National Agreement, and Article II, Section 6, paragraph (g), of the November 20, 1964 National Agreement, and Claimant would have been properly paid had her position not been filled on her birthday while she was on vacation. It is well settled that, circumstances permitting, Carrier can blank the assignment of a vacationing employe, either in whole or in part. In this case, and particularly as concerns the day which was her birthday, the Carrier chose to fill Claimant's position. If she had not been on vacation Claimant would have had the right to fill the position on her birthday. (Award 15227) Since Carrier chose to fill the position, the claim is meritorious under the agreed-upon Interpretations dated June 10, 1942, to Article 7 (a) of the National Vacation Agreement.

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 violated.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of June 1967.