

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5933) that:

1. Carrier violated the Clerks' Rules Agreement when it filled a position on the birthday holiday of the regularly assigned occupant thereof by the use of a furloughed employee at the pro rata rate in lieu of the regular occupant at the overtime rate.

2. Carrier shall now be required to compensate employee A. Getz for eight (8) hours at the overtime rate of Baggageman Position No. 2020 for March 7, 1965.

EMPLOYEES' STATEMENT OF FACTS: The following positions were in effect at Savanna, Illinois during the period covered by the instant claim:

Pos. No.	Title	Occu- pant	Rate	Hrs. of Service	Rest Days	Relieved By
2020	Baggageman	L. Fish	\$20.46	2:30P-11:30P	Sat-Sun	T. Cravatta
No. 6	Relief	T. Cravatta			Wed-Thurs	
	Sta. Baggageman	Pos. 2021		5:00A- 1:00P - Friday		
	Sta. Baggageman	Pos. 2020		2:30P-11:30P - Sat-Sun		
	Sta. Baggageman	Pos. 2019		10:00P- 6:00A - Mon-Tues		

Due to the absence of the regular occupant of Station Baggageman Position No. 2020, employee L. Fish, on leave account sickness, Bulletin No. 8, dated February 23, 1965 was issued, advertising Position 2020 for bid. Copy of Bulletin No. 8 is submitted as Employees' Exhibit A.

Employee T. J. Cravatta was the successful applicant for Position 2020 and was assigned thereto by Bulletin No. 11 dated March 3, 1965, copy of

In accordance with the provisions of the aforequoted which specifically provide that other than regularly assigned employees such as claimant Getz shall be given their birthday off, claimant Getz was, on his birthday, i.e., March 7, 1965, given the day off for which he was allowed, also in accordance with the provisions of the aforequoted and having otherwise qualified therefor, 8 hours' pay at the pro rata rate of Position No. 2020, which is the position he otherwise would have worked had not March 7, 1965 been his birthday and had not he been given the day off in accordance with the specific provisions of the aforequoted.

Position No. 2020, the position claimant Getz would have worked on March 7, 1965, had that day not been his birthday and had he not been given the days off in accordance with that portion of Section 6(b), Article II-Holidays of the Agreement dated November 20, 1964, which specifically provides that other than regularly assigned employees such as claimant Getz " * * * shall be given the day off * * *" on their birthday, was filled on March 7, 1965 by unassigned furloughed employee D. Lammers, who was recalled from the furloughed list in accordance with applicable rules and who was allowed, also in accordance with applicable rules, 8 hours at the straight time rate of Position No. 2020 for such service.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. C. Hopper, Acting General Chairman, under date of June 29, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case worked Relief Position No. 6 on Friday, March 5th and Saturday, March 6th. Sunday, March 7th, was a regularly assigned work day of Relief Position No. 6 and was also Claimant's birthday. In accord with the applicable provision of the agreement, it was a holiday insofar as Claimant was concerned. He was allowed 8 hours' holiday pay for Sunday, but was not permitted to fill the position on that day. Instead, Carrier called a furloughed employee to fill the position on that day and paid him at the straight time rate of pay.

Petitioner contends that the Claimant had a preferential right to work on his birthday pursuant to the Clerks' Agreement. Carrier, on the other hand, argues that the language of the Mediation Agreement of November 20, 1964 is mandatory, and that employees must be given a day off with pay on their birthday anniversaries.

The identical issue was presented in Award 15638. We concur with the reasoning in that case and the conclusion that the Claimant, in accordance with the provisions of the 1964 Mediation Agreement, did have the preferential right to work and was, indeed, entitled to such work on his birthday. (Awards 15638, 15227, 15598) We will 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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1967.