

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6150) that:

1. The Carrier violated the Clerks' Agreement when on May 11, 1965, it failed and has refused to compensate Clerk L. W. McCreight for eight (8) hours' pay on that date, at premium rate of Check Clerk Job No. 110 at the Portland, Oregon, Freight Station. Clerk L. W. McCreight will now be allowed such claim as outlined above.

2. The Carrier violated the Clerks' Agreement when on April 21, 1965, it failed and has refused to compensate Clerk N. A. Hertel for eight (8) hours' pay on that date, at premium rate of General Clerk Job No. 40 at the Portland, Oregon, Freight Station. Clerk N. A. Hertel will now be allowed such claim as outlined above.

EMPLOYEES' STATEMENT OF FACTS: Clerks L. W. McCreight and N. A. Hertel were the regular assigned incumbents of Check Clerk Job No. 110 and General Clerk Job No. 40, respectively. On the dates of the claim both these employees were on their vacation and which was their birthday. In both cases their birthday fell on a work day during their vacation period; their respective assignments were filled by a relief employee who was permitted to fill the position on the birthday holiday of these employees. Both of the involved positions are five day positions with Saturday and Sunday as rest days.

Handling of these cases with Carrier are as indicated by the attached exhibits:

EMPLOYEES' EXHIBIT A - Division Chairman's letter of June 1, 1965, to Superintendent.

EMPLOYEES' EXHIBIT B - Superintendent's letter of June 8, 1965, to Division Chairman.

EMPLOYEES' EXHIBIT C - General Chairman's letter of July 9, to Assistant to Vice President.

CARRIER'S EXHIBIT G - Mr. Beckley's letter dated September 8, 1965, arranging to withhold a decision in these cases until after conference discussion.

CARRIER'S EXHIBIT H - Mr. Beckley's letter dated January 3, 1966, following conference discussion held November 17, 1965, declining claim of Clerk L. W. McCreight.

CARRIER'S EXHIBIT I - Mr. Beckley's letter dated January 3, 1966, following conference discussion held November 17, 1965, declining claim of Clerk N. A. Hertel.

CARRIER'S EXHIBIT J - Mr. Eoff's letter dated February 2, 1966, with enclosure, requesting reconsideration of the claims.

CARRIER'S EXHIBIT K - Mr. Beckley's reply to Mr. Eoff, agreeing to further conference discussion of the matter, dated February 8, 1966.

CARRIER'S EXHIBIT L - Mr. Eoff's letter of March 28, 1966, again requesting reconsideration of the denial of the claims.

CARRIER'S EXHIBIT M - Mr. Beckley's reply to Mr. Eoff, reaffirming his previous decision of denial, dated May 25, 1966.

CARRIER'S EXHIBIT N - Mr. Eoff's letter of July 22, 1966, requesting further conference discussion of the dispute.

CARRIER'S EXHIBIT O - Mr. Beckley's reply to Mr. Eoff, dated August 2, 1966.

CARRIER'S EXHIBIT P - Mr. Eoff's letter of August 5, 1966, requesting an extension of time on the Time Limit on Claims provision of the Agreement.

CARRIER'S EXHIBIT Q - Mr. Beckley's letter of August 16, 1966, agreeing to extend the time limit until 12:00 Midnight, December 31, 1966.

CARRIER'S EXHIBIT R - Mr. Beckley's letter dated October 19, 1966, following conference discussion held October 3, 1966, once again reaffirming the previous denials of these claims.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants' birthdays fell on work days of their respective work week while they were on vacations. Their positions were filled by relief employees, who were also permitted to fill the positions on the birthday holiday of each Claimant.

Each Claimant was paid 8 hours pro rata vacation pay, and each is claiming 8 hours at the rate of time and one-half of their respective rate of pay in addition to compensation already received.

Carrier chose to fill each Claimant's position on his birthday and, had he not been on vacation, he would have had the right to fill his position on his birthday (Award 15227 - Hall).

The issue has been presented to this Board on several occasions (Awards 15722 and 15910, Third Division; and 5251, Second Division). We will follow the doctrine of "STARE DECISIS" and sustain the claims.

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 Carrier violated the Agreement.

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 June 1968.