

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-6277) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to use the regularly assigned employee to fill his position on his Birthday Holiday, and in lieu thereof, removed the regular occupant of Position No. 5211 from his regular position to fill that assignment.

2. Carrier shall now be required to compensate employee Kenneth W. Meister for eight (8) hours at the time and one-half rate of Counterman Position No. 5187 for November 26, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee Kenneth W. Meister is the regularly assigned occupant of Counterman Position 5187 in Seniority District No. 118, Milwaukee Shops, Milwaukee, Wisconsin. His hours of service are from 7 A.M. to 3:30 P.M., Monday through Friday, with rest days of Saturday and Sunday.

On November 26, 1965, employee Meister observed his Birthday Holiday, and in lieu of being permitted to fill his own position on that day, which would have been at the overtime rate of pay, the Carrier removed employee R. H. Krueger from his regular assignment on Storehelper Position 5211 and required him to fill the Counterman Position 5187. See Employees' Exhibit A.

Employee R. H. Krueger worked Position 5187 on November 26, 1965 and Carrier in turn left employee Krueger's regular position, Storehelper Position 5211, vacant and unfilled on that day.

Claim was filed with District Material Manager, Mr. H. Marxen, on December 27, 1965 and was appealed to Manager of Materials, Mr. E. F. Volkman, on February 15, 1966 and Vice President-Labor Relations, Mr. S. W. Amour on May 25, 1966 and was declined by each in turn. Submitted as Employees' Exhibit B is copy of General Chairman's letter dated September 15, 1966 addressed to Mr. S. W. Amour.

On Friday, November 26, 1965 Claimant Meister's birthday holiday, neither Employee Krueger, nor any other employee was assigned to or utilized on Claimant Meister's Position 5187, nor was Employee Krueger " * * * removed * * * " from his regular Position 5211 to perform service on Position 5187, as the Carrier will establish in its POSITION.

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

CARRIER'S EXHIBIT A - Letter written by Mr. S. W. Amour, vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman dated July 18, 1966.

CARRIER'S EXHIBIT B - Letter written by Mr. S. W. Amour to Mr. H. C. Hopper dated March 31, 1967.

(Exhibits not reproduced.)

OPINION OF BOARD: Award No. 15783 (Referee McGovern) held that a regularly assigned employee or temporarily assigned employee to a position, under the Agreement before us, has a preferential right to the work of the position performed on the employee's Birthday Holiday. Cf. Award Nos. 15598, 15599, 15638 and 15694.

Claimant's regular assignment was to Counterman Position 5187. November 26, 1965, was his Birthday Holiday. Clerks' contend that on that date Claimant's position was worked by R. H. Krueger who was regularly assigned to Storekeeper Position 5211. Carrier denies that Claimant's position was worked on his Birthday Holiday by Krueger.

The sole issue is whether Clerks satisfied its burden of proof that Claimant's position was worked on his Birthday Holiday.

Clerks submitted the following statement signed by Krueger:

"On November 26th, 1965, Meister's Birthday, I was removed from my Storehelper position by order of General Foreman Harry King and to perform Counter Work. My Storehelper position that day wasn't filled by anyone."

Carrier counters with a statement of General Foreman King:

"My present title is General Foreman, and I have been working in the Material Division of the CMStP&P Railroad on this position since November 1, 1961.

I did not remove Employee Krueger from his regularly assigned Storehelper Position No. 5211 on November 26, 1965 and assign him, or any other employee, to the position of Counterman No. 5187 on that date. If an employee is transferred to another job the immediate supervisor is consulted and he informs the employee of the transfer.

/s/ Harry King
General Foreman

and, a statement of Sectional Stockman Koch who was Claimant and Krueger's immediate supervisor:

My present position is Sectional Stockman and I have been a Sectional Stockman in the Material Division of the CMStP&P Railroad for fourteen years. I worked in the Material Division, CMStP&P Railroad for thirty-three (33) years.

As Sectional Stockman I was the immediate Supervisor on November 26, 1965 of Employee Ray Krueger. I was not instructed by General Foreman King, nor I did not remove Employee Krueger from his regular assigned position of Storehelper on November 26, 1965 and assign him or any other employee to Counterman Position No. 5187 on that day.

/s/ Franklin R. Koch"

In the absence of persuasive material and relevant corroborating evidence we are unable to apply the tests of credibility to the statements. Consequently, we will dismiss the Claim for failure of proof.

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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1968.