

Award No. 17057
Docket No. CL-17238

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, 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-6300) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to work the regularly assigned occupant of Position No. 8705 on his Birthday Holiday to perform the duties of his position and in lieu thereof used the regularly assigned occupant of Position No. 8704 to perform its work.

2. Carrier shall now be required to compensate employe W. J. Kinast for eight (8) hours at the overtime rate of Position 8705 for January 25, 1966.

EMPLOYEES' STATEMENT OF FACTS: Among others, the Carrier maintains the following positions in the Regional Data Office in Seniority District No. 151 at Milwaukee, Wisconsin:

Pos. No.	Title Classification	Occupant
87010	Cashier	M. Woelfl
87020	Asst. Cashier	T. Wojtasiak
87030	Asst. Cashier	A. Sobczak
87040	Asst. Cashier	M. Hagberg
87050	Asst. Cashier	W. Kinast

Due to employe Woelfl taking his vacation employe Sobczak moved to and filled the vacancy on Cashier Position 87010; employe Hagberg moved to and filled the vacancy thus created on Assistant Cashier Position 87030, and employe Lois Scott, the regularly assigned occupant of Comptometer Operator Position 8749, moved to and filled the vacancy on Assistant Cashier Position 87040. This arrangement was in effect on the claim date involved in this dispute.

the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any."
(Emphasis ours.)

In accordance with the provisions of the aforementioned, which specifically provides that regularly assigned employees such as claimant Kinast shall be given their birthday off, claimant Kinast was, on his birthday, i.e., January 25, 1966, given the day off for which he was allowed, also in accordance with the provisions of the aforementioned and having otherwise qualified therefor, 8 hours' pay at the pro rata rate.

Claimant Kinast's regularly assigned Assistant Cashier Position No. 8705 was blanked on Tuesday, January 25, 1966.

Whereas Tuesday, January 25, 1966 was claimant Kinast's birthday and as a result he was given the day off, it was an assigned work day for the occupants of the other three (3) Assistant Cashier positions, i.e., Assistant Cashier Positions 8702, 8703 and 8705, and they worked that day performing the principal duties of their positions, duties which are identical to those of Claimant Kinast's regularly assigned Assistant Cashier Position 8705.

Attached hereto as Carrier's Exhibit E is a copy of a letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, of August 2, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Kinast was regularly assigned to Assistant Cashier Position 87050 9:00 A.M. to 5:00 P.M., Monday through Friday. On Tuesday, January 25, 1966, Claimant celebrated his birthday and was given the day off. Claimant contends that Carrier filled his position with Assistant Cashier Lois Scot, who held Position No. 87040. Claimant further contends that the assigned duties of these two positions are materially different, and that, therefore, Claimant's position was not blanked on his birthday-holiday. Carrier contends that the principal duties of each of the aforementioned positions are identical; that both were established under Section 1 of the April 18, 1960 Agreement; and that, therefore, Claimant's position was blanked on his birthday-holiday.

Claimant has cited Awards 15873, 15638, 10290, 15722, 15911, 16252, 16256, 16429, 16666 and 13894. This Board does not find that these Awards are in point in this dispute. Awards 15783 and 15638 involve the calling of a furloughed employee to perform Claimant's work; Award 10290 involved the assigning of an employee who did not normally perform duty of Claimant; Award 15722 involved the filling of Claimant's position; Awards 15911 and 16252 involved specific work not normally performed by employee that was ordered to fill Claimant's duty; Award 16256 involved a dispute concerning preference to overtime; Award 16429 involved the calling in of a relief employee on Claimant's holiday; Award 16666 involved the filling of a position by another employee; and Award 13894 concerned itself with the question of whether or not Carrier was justified in immediately calling in another employee after making only one phone call to Claimant, who did not answer, several hours before he was needed.

The record in this case discloses that there were four Assistant Cashiers in the office where Claimant worked. On Record Page 3 of the Organization's

submission, it is admitted that the assigned duties of each are the same. The Organization then contends that the "actual" duties are different. The record further discloses that the bulletined positions of each of the four Assistant Cashiers were identical as far as describing the duties of each; only the designating number of the position is different. This Board finds that the "actual duties" of each as set out in Claimant's Exhibit B clearly fall within the "principal duties" described in the bulletins advertising the positions compared in this dispute. There is no contention of either of the parties that one of the four Assistant Cashiers in Claimant's office performed duties exclusive to the others. Neither is there a contention that a furloughed or additional employee was called in to perform Claimant's work on his Birthday-holiday. Therefore, it is concluded that Claimant's position was blanked on this particular day. To hold otherwise would require Carrier to close an entire office or call the Birthday-holiday celebrant in on every Birthday-holiday at time and one half. It is well settled that Carrier is not compelled to work an employee on his Birthday-holiday. See (Award 11079, 14597, 15731, and others). There being no showing that a provision of the Agreement was violated, this Claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1969.