

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21849
Docket Number CL-21607

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8081, that:

(a) Carrier violated Rules 42, 47(b) and other Rules of the May 1, 1955 Rules Agreement between the parties; also provisions of the August 21, 1954 National Paid Holiday Agreement, as amended, and the December 17, 1941 National Vacation Agreement, as amended, when it refused to include the Holiday pay earned by the Extra Clerk who covered his assignment on the September 2, 1974 Labor Day Holiday in the vacation pay allowed to Clerk D. R. Lindenmuth for vacation taken during his Saturday, August 31, through Wednesday, September 4, 1974 work week.

(b) Carrier be required to allow Claimant Cycle Clerk D. R. Lindenmuth an additional day's pay at the punitive rate of his Cycle Clerk position for the date of September 2, 1974.

OPINION OF BOARD: Resolution of this claim rests on a determination of a certain basic fact, i.e., did the Carrier use an extra clerk to fill Claimant's position on Labor Day, September 2, 1974, while he was on vacation. Review of the authority cited by both parties supports payment of the claim if Claimant's position was in fact filled on that holiday. See Awards 10550, 11827, 14886, 15910, 16427, 17906, and 19675.

However, the Carrier asserts, "There is no proof in the record that he regularly worked on holidays, that his position has always been filled on a holiday or that his position was filled on the particular holiday, Labor Day, September 2, 1974." Carrier consistently maintained this argument in handling on the property. Careful review of the record discloses that there is, in fact, no proof that an extra clerk actually filled Claimant's job on September 2, 1974.

The 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

The agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulk
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.

FEB 1978