

RECEIVEDNATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30639
Docket No. MW-29358
94-3-90-3-271

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to allow Mr. B. Stefano holiday pay for Christmas Eve (December 24, 1988) and Christmas Day (December 25, 1988) (System Docket MW-352).
- (2) As a consequence of the aforesaid violation, Mr. B. Stefano shall be allowed sixteen (16) hours of pay at the Class 2 Machine Operator's rate."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved therein.

Parties to said dispute waived right of appearance at hearing thereon.

On or before December 18, 1988, the Carrier gave notice that because of seasonal job cuts, the Claimant, along with approximately 40 other employees would have their positions abolished effective with the end of their tour of duty on December 23, 1988. Under the relevant rules, the Claimant had ten (10) days in which to make a displacement; that is, until January 3, 1989 (as the January 1 holiday was observed on January 2 - the tenth day). Christmas Eve and Christmas Day are recognized holidays under the Agreement and were for contractual purposes observed on Sunday and Monday, December 25 and 26 respectively.

The Claimant, on December 27, identified a junior employee to displace, but this occurred after the start time of the position. Thus, he was allowed to displace the next day, December 28, 1988.

The claim before the Board represents a protest of the Carrier's decision not to pay the Claimant holiday pay for Christmas Eve and Christmas Day because he did not work the workday (December 27) following the holiday (Christmas Day observed on December 26). The dispute involves the application and interpretation of Rule 14 which states:

"(a) Subject to the qualifying requirements applicable to regularly assigned employees contained in paragraph (b) hereof, each regularly assigned employee shall receive eight (8) hours' pay at the straight time rate of the position to which assigned for each of the holidays enumerated in Rule 13.

Subject to the applicable qualifying requirements in paragraph (b) hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof, provided (1) compensation for service paid him by the Company is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday and (2) he has had a seniority date for at least sixty (60) days or has sixty (60) days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with the union shop agreement, or disapproval of application for employment.

(b) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid him by the Company is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following the rest days shall be considered the workday immediately following the holiday. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

All others for whom holiday pay is provided is in paragraph (a) hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the Company is credited; or
- (ii) Such employee is available for service.

Note: 'Available' as used in subsection (ii) above is interpreted to mean that an employee is available unless he lays off of his own record or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

(c) When any of the holidays enumerated in Rule 13, or the day observed, falls during an employees' vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for in paragraph (a) of this Rule provided he meets the qualification requirements specified. The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes. An employee's vacation period will not be extended by reason of any of the ten (10) recognized holidays, or the day observed.

(d) Special qualifying provision for employees qualifying for both the Christmas Eve and Christmas Day holiday:

An employee who meets all other qualifying requirements will qualify for holiday pay for both Christmas Eve and Christmas Day if on the 'workday' or the 'day', as the case may be, immediately preceding the Christmas Eve holiday he fulfills the qualifying requirements applicable to the 'workday' or the 'day' before the holiday and on the 'workday' or the 'day', as the case may be, immediately following the Christmas Day holiday he fulfills the qualifying requirements applicable to the 'workday' or the 'day' after the holiday.

(e) Under no circumstances will an employee be allowed more than one (1) overtime payment for service performed by him on a holiday which is also a work day, a rest day and/or a vacation day."

The Organization essentially argues the Claimant should be entitled to holiday pay. Because his position was abolished, they contend he is "other than a regularly assigned employee." Thus, inasmuch as he was "available," he qualifies for holiday pay. They also reject the Carrier's argument that the Claimant was unavailable and did not work the day after the holiday because he failed to make a displacement. While he did not displace, the Organization asserts that this was because the Carrier failed to give him adequate and accurate information about available displacements in the context of great confusion caused by the large numbers of abolishments.

The Carrier relies on the language of Rule 14 and a previous award between the Parties (Third Division Award 27635) in contending that the Claimant is not entitled to holiday pay. In their opinion, since he is covered by Paragraph 2 of Section B of Rule 14, to be eligible he must either perform compensated service or be available. He did not work, and he was not available the day after the holiday because he chose not to displace until December 28.

It is the opinion of the Board that the evidence is insufficient to conclude that the Claimant was prevented from making a displacement for December 27. In this regard, the Organization relies on pure assertion. There are no statements or other kinds of evidence, as opposed to mere assertion, that the Claimant made specific inquiries which were ignored, falsely responded to, or otherwise thwarted. Lacking such evidence, the Board finds the factual elements necessary to sustain the claim lacking. Without such evidence the Claimant was an employee who was waiting to exercise displacement rights and, as such, was unavailable for service.

AWARD

Claim dismissed.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.