PUBLIC LAW BOARD 5051

CASE NO. 1
AWARD NO. 1

PARTIES TO DISPUTE

CARRIER
TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS

AND

LABOR ORGANIZATION
UNITED TRANSPORTATION UNION
(YARDMASTERS DIVISION)

CARRIER'S FILE NO.
013-275-15

ORGANIZATION FILE NO.
Y89-12-2

STATEMENT OF CLAIM

Claim on behalf of Extra Yardmaster M.A. Putz for eight (8) hours pay at the holiday rate of pay for working as a Yardmaster on December 25, 1989.

STATEMENT OF BACKGROUND

A review of the record evidence reflects that Claimant, Extra Yardmaster, M.A. Putz, submitted a time claim for eight (8) hours of holiday pay in connection with having worked as a yardmaster on Christmas Day, December 25, 1989. Carrier paid Claimant holiday pay per his December 25th timeslip on his payday of January 10, 1990. Subsequently, Claimant was notified by letter dated January 17, 1990 from Senior Trainmaster, B.P. Sheeley, that the holiday pay he claimed for December 25th could not be allowed as there were no provisions for holiday pay covering extra yardmasters under the current agreement. Sheeley advised Claimant the eight (8) hours of holiday pay which had already been paid to him would be deducted on his next pay check he would receive on payday, January 24, 1990. The instant claim was filed as a result of Carrier's action of deducting the eight (8) hours of holiday pay it had originally paid to Claimant in response to the timeslip he submitted on date of December 25, 1989.

ORGANIZATION'S POSITION

The Organization explains that Claimant's time claim for the holiday pay in question was submitted pursuant to the provisions contained in Article III, Section 1 of the November 29, 1967 National Agreement. Section 1 reads in whole as follows:

> ARTICLE III -- HOLIDAYS
>
> Section 1. Effective January 1, 1968, yardmasters shall be paid at the rate of time and one-half for working on any of the following enumerated holidays, in addition to their regular pay:
>
> | | |
> |---|---|
> | New Year's Day | Labor Day |
> | Washington's Birthday | Thanksgiving Day |
> | Decoration Day | Christmas |
> | Fourth of July | Employee's birthday |
>
> NOTE: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above numerated holidays.

The Organization notes that Christmas is one (1) of the eight (8) holidays enumerated in Section 1 for which yardmasters are to be paid at the rate of time and one-half for working in addition to their regular pay. In addressing Carrier's position Claimant is not entitled to the holiday pay because of his status as an extra yardmaster, the Organization notes that the relevant language of Section 4 of the November 29, 1967 National Agreement does not differentiate between yardmasters and extra yardmasters as those terms are defined in the Scope Rule. Section 4 reads in whole as follows:

> Section 4. In instances when a recognized holiday, or the day such holiday is observed by the State or nation, falls on an assigned work day of a regular yardmaster assignment, the carrier shall have the right to blank such position on that day and the yardmaster then holding such assignment shall be paid for that day on the basis of his regular straight time rate of pay, provided he does not render other compensated service for the railroad during the hours of such yardmaster assignment. If any work of such position is performed by other than the incumbent on the shift on which it is blanked, it shall be performed in accordance with existing schedule rules.

The Scope Rule reads in pertinent part as follows;

> "The term 'yardmaster' as used herein means yardmasters of all grades, except general yardmasters who are vested with responsibilities and authority that stamp them as officials."

Additionally, the Organization contends that the provisions of Section 6 of Article III which were added to the Article by the September 20, 1968 Agreement amending, in part, the November 29, 1967 Agreement and made effective January 1, 1968, are not applicable to the case at bar asserting that, the Section relates only to holidays falling on rest days, or during vacations, and to extra or regularly assigned yardmasters who might be eligible for holiday pay falling on a rest day or during a vacation period pursuant to other schedule agreements. Section 6 reads in full as follows:

> ARTICLE II -- HOLIDAYS
>
> Section 6 (a) When any of the holidays enumerated in Section 1 hereof falls on a rest day of a regularly assigned yardmaster, he shall receive, in addition to his regular pay, one day's pay at the straight time rate of his regular position, provided he fills his regular position on the last workday immediately preceding and on the first workday immediately following the holiday falling on a rest day. A regularly assigned relief yardmaster who qualifies for pay for a holiday falling on a rest day in accordance with the foregoing shall be paid at the straight time rate of the position he filled on the last workday immediately preceding the holiday falling on a rest day. In addition to the one day's pay at the straight time rate for the rest day holiday herein provided, if a regular yardmaster works as yardmaster on his rest day he shall be entitled to one time and one-half payment for service performed by him pursuant to Section 3 hereof.
>
> (b) When any of the holidays enumerated in Section 1 hereof falls during a regularly assigned yardmaster's vacation period, he shall receive, in addition to his regular pay, one day's pay at the straight time rate of his regular position, provided he fills his regular position on the last workday immediately preceding and on the first workday immediately following his vacation period. A regularly assigned relief yardmaster who qualifies for pay for a holiday falling during his vacation period in accordance with the foregoing shall be paid at the straight time rate of the position he filled

on the last workday immediately preceding his vacation period.

(c) The rest day holiday and vacation holiday pay provided by this Section 6 shall not apply to extra yardmasters, or to regularly assigned yardmasters who may be eligible for holiday pay falling on a rest day or during a vacation period pursuant to other schedule agreements.

(d) The General Chairman on any individual railroad may be advising the carrier in writing by October 15, 1968 elect to preserve in its entirety an existing provision for rest day holiday pay in lieu of this Section 6.

The Organization submits Claimant was not working the holiday on either a rest day or during a vacation period, nor was he working as a general yardmaster as that position is defined in the afore-referenced Scope Rule. For this same reason, the Organization asserts Award No. 1 of Public Law Board No. 3107 cited by Carrier in support of its position extra yardmasters are not entitled to holiday pay is inapplicable here because this Award construes Section 6 and Section 6 pertains to circumstances not in evidence in the instant case. The Organization notes that in the case resulting in Award No. 1 of Public Law Board No. 3107, the yardmaster claimants did not actually work the holiday in question whereas, in the instant case, Claimant did work on Christmas Day. According to the Organization, this distinction between having actually worked on the holiday as opposed to not having worked on the holiday was addressed by a majority of the Board in Fourth Division Award No. 3187 which held in part the following:

> ... Section 1 of Article III does not distinguish among the various categories of yardmasters defined in the Scope Rule but provide that yardmasters as such will all be paid time and one-half for working on a holiday in addition to their regular pay.

The Board further held:

> ... Further, we find that the provisions of Section 6 of the 1968 Agreement are not applicable to this dispute since that section relates only to holidays falling on rest days or during vacations.

The Organization argues that Award No. 3187 addressing the identical issue that is involved in the instant case is dispositive of the issue and therefore the Board here should find accordingly and rule to sustain the claim.

CARRIER'S POSITION

Carrier argues that Section 1 of Article III of the November 29, 1967 Agreement makes no provision for holiday pay for extra board yardmasters and that, as a result, it has never paid the eight (8) hour pro rata rate holiday pay to extra board yardmasters. However, Carrier relates, it has paid the rate of time and one-half for working on holidays to regular and extra board yardmasters as provided for in the 1967 Agreement. Carrier asserts that during the handling of this claim throughout its entire progression, the Organization failed to show any agreement provision relating to holiday pay qualifications covering their craft which would tend to support the contention that holiday pay claims are valid for yardmasters attached to the extra board. Carrier, in referencing the April 18, 1975 Memorandum of Agreement, notes that said agreement provides for payment of the minimum monthly salary of a yardmaster if a yardmaster is attached to the extra board for a full calendar month or payment of a pro-rated daily rate to yardmasters attached to the extra board for a portion of a month and that both these situations include a day's pay for any holidays that might fall in a period that an extra board yardmaster is attached to the board.

Carrier claims the issue in dispute here is identical to the issue adjudicated between the very same parties in Award No. 1 of Public Law Board No. 3107 and that based on the principle of res judicata the holding in Award No. 1 which was in its favor should be held by this Board to be dispositive of the subject claim. In particular, Carrier cites the rationale advanced by the Board in pertinent part in denying the claim as follows:

> The Board has considered this argument and has concluded that it is limited by the specific language of the Agreement, and since Section 6(c) specifically provides that Section 6 does not apply to extra yardmasters, that we are controlled by this language.

As further support for its position extra board yardmasters are not entitled to receive holiday pay under the provisions of Article III, Carrier cites, in pertinent part, Fourth Division Award No. 3265 which, in turn, relied on the holdings of Fourth Division Award No. 2628 wherein the Board stated, among other things, the following:

> Article III Section 4 of the Nov. 29, 1967 Agreement is pertinent. It provides that in instances when a recognized holiday falls on "an assigned work day of a regular yardmaster assignment," the yardmaster then holding the assignment will be paid for one day if he does not perform other compensated service for Carrier during the hours of that assignment.

> It is clear that the above Section provides for holiday pay only for the yardmaster holding a regular assignment and does not apply to extra yardmasters. We have been referred to no rule that provides for holiday pay for extra yardmasters. Accordingly, the critical inquiry is whether Claimant is a regularly assigned yardmaster.

Carrier urges this Board not to disturb either Award No. 1 of Public Law Board No. 3107 or Fourth Division Award No. 3265 reaffirming the holdings in Fourth Division Award No. 2628. Carrier further urges this Board to take judicial notice of the dicta set forth in Award No. 4 of Public Law Board No. 3972 in support of the doctrines of stare decisis and res judicata. With Referee Dana E. Eischen presiding, Public Law Board No. 3972 held in relevant part the following:

> The common law judicial doctrines of stare decisis and res judicata do not strictly apply in labor-management arbitration. Thus, at least technically, a subsequent arbitrator is free to disregard antecedent awards involving the same parties, issues and contract language and dispense his own personalized interpretation of language already litigated and decided. Most journeyman arbitrators recognize, however, that in the absence of compelling reasons such contrariness is merely ego indulgence at the expense of the parties. Such unpredictability of results merely encourages another round of forum shopping by the losing party. The result is constant instability in labor-management relations which renders contract administration nearly impossible. Not only are the legitimate interests of the private parties thus thwarted by the refusal or failure of arbitrators to treat prior decisions involving identity of issue, parties and language as authoritative; but the interests of the taxpaying public which underwrites arbitration in the railroad industry also is ill served by constant relitigation of supposedly settled issues. Unless the prior decision involving identical parties, issues and contract language is 'clearly erroneous, fraudulent or based upon an inadequate record, therefore, most professional arbitrators would and should consider it authoritative. ***

Carrier asserts that as there is no basis whatever for honoring the holiday pay claim for the Christmas holiday, December 25, 1989, submitted here by Claimant, it urges this Board to deny the subject claim in its entirety.

FINDINGS

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 22, 1991, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

This Board is in general concurrence with the dicta espoused by Public Law Board No. 3972 in Award No. 4 concerning the common law judicial doctrines of stare decisis and res judicata. At the same time, however, this Board notes that while claims involving the same two parties may, at first blush, involve identical issues, upon closer examination of the fact circumstances it is found there exist sufficient differences between such claims as to distinguish them from one another therefore rendering the doctrines of stare decisis and res judicata inoperative. In so holding, we do not concur in Carrier's position that Award No. 1 of Public Law Board No. 3107 is dispositive of the instant claim as it is our view that Section 6 of Article III has no applicability to the fact circumstances of the instant case. We are persuaded that Section 6 applies only to holidays falling on rest days or during vacations. In this regard, we concur in the rationale set forth in Fourth Division Award No. 3187 with Referee Lieberman presiding wherein that Board held, in pertinent part, the following:

> Further, we find that the provisions of Section 6 of the 1968 Agreement are not applicable to this dispute since that section relates only to holidays falling on rest days or during vacations.

There has been no showing in the record evidence before this Board that the Christmas holiday in question, claim date of December 25, 1989, fell on either a rest day of Claimant's or during a vacation period of Claimant's. Therefore, we reject Carrier's line of argument that the findings advanced in Award No. 1 by Public Law Board No. 3107 should be affirmed here and deemed dispositive of the instant claim.

Carrier's argument that the provisions of Article III, particularly Sections 1 and 4, do not provide holiday pay for extra board yardmasters is also rejected on grounds that with respect to the former, Section 1 makes no distinctions between various categories of yardmasters, such as regular assigned yardmasters as opposed to extra board yardmasters, and our view, that with respect to the latter, the holding by the Fourth Division in Award No. 2628 as reaffirmed in Award No. 3265 construing the meaning of Article III, Section 4, was incorrect. With respect to the meaning and intent of Section 1 of Article III, we are in

concurrence with the rationale set forth by the Fourth Division in its Award No. 3187 wherein it stated, "Section 1 of Article III does not distinguish among the various categories of yardmasters defined in the Scope Rule but provides that yardmasters as such will all be paid time and one-half for working on a holiday in addition to their regular pay." With respect to the meaning and intent of Section 4, it is our view, as opposed to the Fourth Division in Awards Nos. 2628 and 3265, that the Section addresses the holding of a regular yardmaster assignment and not the fact one has to be a regular yardmaster in order to be entitled to the holiday pay benefit conferred in Section 1. We believe the key language in support of our view is as follows:

> "... the Carrier shall have the right to blank such position on that day and the yardmaster then holding such assignment [a regular yardmaster assignment] shall be paid for that day on the basis of his regular straight time rate of pay. ..."

The above quoted language makes no reference to either a regular or extra board yardmaster but does reference the type of assignment that must be worked in order to be entitled to receive holiday pay and that assignment is a regular yardmaster assignment. We are persuaded that if the Parties to the 1967 National Agreement meant to distinguish between regular assigned yardmasters and extra board yardmasters with respect to entitlement of holiday pay for the enumerated eight (8) holidays set forth in Section 1 of the Agreement, they certainly possessed the expertise in the drafting of contract language to easily make that distinction. In this regard, even though we found Section 6 to be inapplicable here, we do find the language of Section 6(c) to be instructive with respect to this latter point. In this section, the Parties did distinguish between extra yardmasters and regularly assigned yardmasters, thus illustrating the point that had they intended to make such a distinction in Sections 1 and 4, they were capable of doing so but, in fact, they made no such distinction. Absent such a distinction in these applicable sections, we are persuaded that the definition of yardmaster as set forth in the Scope Rule must be controlling in any construction of Sections 1 and 4. We find that the pertinent language of the Scope Rule could not be any clearer or more straightforward. The Scope Rule defines the term yardmaster as meaning, "yardmasters of all grades" making but one exception and that is to "general yardmasters." Thus, we deduce that Sections 1 and 4 of Article III refer to yardmasters of all grades, which includes extra board yardmasters and excludes only general yardmasters. In so finding, we hold that Claimant was in fact, contractually entitled to receive holiday pay for having worked on Christmas on the claim date of December 25, 1989.

Accordingly, we rule to sustain the instant claim in its entirety.

A W A R D

CLAIM SUSTAINED

R P Mathewson
Carrier Member
R.P. MATHEWSON

J D Martin
Employee Member
J.D. MARTIN

Geo E Larney
Neutral Member and Chairman
GEORGE EDWARD LARNEY

Chicago, Illinois

Date: Sept 16, 1991