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JUN 4 1979

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 7942  
Docket No. 7739  
2-NRPC-EW-'79

The ~~Second Division~~ <sup>Panel</sup> consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Council No. 7, International Brotherhood of Electrical Workers  
{  
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) violated the current agreement when they worked the Electrical Workers on a holiday, October 25, 1976, which was designated by the federal government as Veterans Day and paid them at the straight time rate of pay for service performed by them on that day.
2. That, accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to compensate the Electrical Workers the holiday pay plus time and one-half rate of pay for all service performed by them on October 25, 1976.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 herein.

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

Veterans Day is an enumerated holiday in the September 1, 1975 Agreement between the parties. Under a letter of understanding dated August 7, 1975 the parties agreed that if the federal government designated a holiday as a date which did not coincide with a state designation the federally designated date would be observed.

The federal government designated October 25, 1976 as Veterans Day. The traditionally observed date had been November 11. The Carrier announced that with the exception of Rhode Island and the District of Columbia, Veterans Day would be observed on November 11 in all states in the Northeast Corridor.

The Carrier proceeded to treat October 25, 1976 as an ordinary work day in those states and applied the holiday rules to November 11, 1976. Holiday pay rates and formulas were applied to November 11, 1976. It does not appear that the claimants made any attempt to treat October 25, 1976 as a holiday or resisted the Carrier's application of the holiday pay rules to November 11, 1976.

The Carrier has raised the issue of unjust enrichment in that a sustaining award would compensate the employes for two Veterans Days. The question of whether the conduct of the parties manifested an agreement to amend their contract, also bears on this set of facts.

During the pendency of this claim however, this Board rendered a decision in Docket No. 7560, Award No. 7849, which case is on all fours with the instant matter. In that Award the Board held, "However, two elements are controlling in this dispute. First, the courts have held that the state laws are controlling with respect to the dates on which holidays will be observed (Consolidated Marketing, Inc. v. Busi., La. App. 1972, 256 So. 2nd 695). Secondly, a fundamental tenet of contract law mandates that contractual provisions in violation of law are void". The Board went on to find that Carrier had the right to change the observance of Veterans day to November 11.

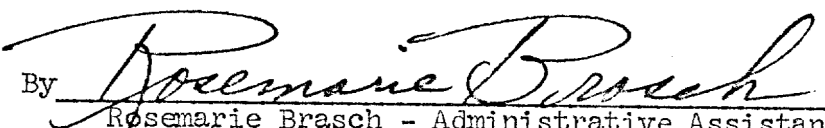
This Board, having ruled on the matter and not finding the Award to be palpably in error, will follow Award 7849 and deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of May, 1979.