

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8843
Docket No. 8802
2-WM-CM-'81

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
and Canada
(
(Western Maryland Railway Company

Dispute: Claim of Employees:

- No. 1. That under the terms and provisions of the controlling Agreement, the Carrier failed to accordingly compensate, Carman J. M. Coberly for fifteen (15) minutes service performed on his regular tour of duty on the date of November 20, 1978, which consequently deprived Claimant compensation for legal holiday, Veterans Day, November 10, 1978.
- No. 2. That the subsequent investigation relating to the above incident, held on the date of January 4, 1979, was in all aspects, an impropriety.
- No. 3. That accordingly the Carrier be ordered to compensate Claimant, J. M. Coberly for all losses arising out of this incident, fifteen minutes at the regular carmen's rate of pay on the date of November 20, 1978, and contractual guaranteed legal paid holiday, Veterans Day, November 10, 1978.

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.

Veteran's Day, a recognized holiday under the contract, fell on November 10, 1978, during the Claimant's scheduled vacation. Article II, Section 7 of the August 21, 1954, Agreement provides the following:

"When any of the eight recognized holidays enumerated in Section 1 of this Article II, or any day which by agreement, or by law or proclamation of the State or Nation, has been substituted or is observed in place of any of such holidays, falls during an hourly or daily rated employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for therein 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."

Section 3 provides:

"An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the workday immediately following. 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."

Section 3 has previously been interpreted to mean that if any compensation is paid to an employee on the workdays preceding and following a recognized holiday, the employee will receive holiday pay. This is well established.

For instance, Third Division Award 19128 stated that under the language of Section 3 holiday pay is not predicated on working a full eight hours on each qualifying day and further that there is no minimum number of hours required. Second Division Award 7174 sustained a holiday claim where an hour was worked. In Award 6893, the Second Division sustained a claim involving fifteen minutes of compensation.

The instant dispute essentially centers around whether the Claimant in fact performed any service for which he should have been compensated on November 20, 1978. This was the Claimant's first workday after his vacation and as a result one of the qualifying days under the Agreement. This is the critical issue in this case and if it is found he performed compensable service the claim must be sustained in light of the aforementioned precedent.

The Organization contends that the Claimant reported for work at 7:00 a.m. and performed duties for a period of 15 minutes for which he should have been compensated. Therefore, in the Organization's opinion, the Claimant is not only entitled to pay for the 15 minutes on November 20 but as a result he is entitled to holiday pay for November 10, 1978. The Carrier, on the other hand, argues that the Claimant did not perform any compensable service but "solely for the express purpose of performing what, in his mind, constituted minimally sufficient service in order to qualify for the holiday on November 10".

In support of their assertion that Mr. Coberly failed to perform service, the Carrier relies entirely on evidence adduced at the investigation held January 4, 1979. The notice of charge which was dated December 28, 1978, read as follows:

"You are charged with responsibility in connection with leaving the Job without permission on November 20, 1978 and filling in your Timecard for time worked from 7:00 A.M. to 7:15 A.M. November 20, 1978, when you did not perform any work."

The investigation, its results and the claims filed in connection therewith are the subjects of a variety of procedural arguments made by both sides. It is proper to consider Carrier's procedural arguments before addressing the merits of this dispute. The Carrier argues that the entire claim should be dismissed because the Organization significantly altered the basis of the claim between the 1st and 2nd steps. They also argue that the claim was again changed on appeal to the Board. In this connection, they contend the claim should be dismissed. In reviewing the Carrier's procedural arguments, it cannot be concluded that there are any procedural defects that would preclude the Board from asserting jurisdiction. In regard to this argument, it is the opinion of the Board that the claim was not altered during the handling on the property to any significant extent. Further, regarding the argument that the portion of the claim relating to the investigation charges was abandoned on appeal we find it was not. Although stated with slightly different wording in the letter of intent to the Board than it was on the property, the claim still in no uncertain words challenged the propriety of the investigation.

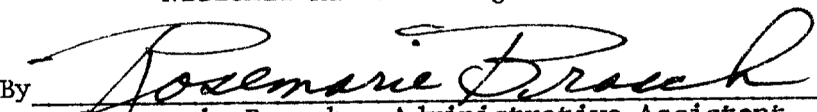
All the evidence relating to whether Mr. Coberly performed any compensable service or whether he was guilty of the charges registered against him is contained in the transcript of the investigation held January 4, 1979. In reviewing the transcript, it can not be concluded that the Claimant failed to perform any work on November 20, 1978, nor can it be concluded that he left the Company property without permission. The transcript is devoid of any substantial evidence that would support the Carrier's arguments. It just simply can't, upon a reading of the transcript, be concluded with any degree of certainty that the Claimant performed absolutely no duties on the date in question. The Carrier has failed to overcome the prima facie evidence, in the form of the Claimant's time card, that he performed 15 minutes work. Therefore, the Claimant is deserving of 15 minutes pay for November 20 and as a result holiday pay for November 10. Further, due to the inconclusive nature of the investigation held January 4, 1979, any reference in connection therewith should be stricken from his record.

A W A R D

Claim sustained.

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 9th day of December, 1981.