

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated Article 2, Sections 1, 3 and 5 as subsequently amended when they denied Sheet Metal Worker, W. L. Hodges, Roanoke, Virginia, compensation for Christmas Eve Holiday, December 24 and Christmas Day Holiday, December 25, 1979.
2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate Sheet Metal Worker, W. L. Hodges in the amount of 16 hours at the pro rata rate for December 24 and 25, 1979.

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.

Claimant W. L. Hodges is a Sheetmetal Worker in Carrier's locomotive shop in Roanoke, Virginia. He works the 11:00 p.m. to 7:00 a.m. shift. On December 23, 1979, Claimant reported for work, remained ten minutes, and returned home, alleging that his wife and children were ill. December 24 and 25 were holidays. On December 26, 1979, Claimant reported for work at 11:00 p.m., clocked out at 11:08, alleging that he was sick, and returned home.

Carrier denied Claimant pay for Christmas Eve and Christmas Day on the basis of his not performing any compensable work on the day before and the day after a holiday as is required by Article 2, Section 3, of the August 21, 1954, Agreement if payment is to be made for the holidays.

"ARTICLE 2, SECTION 3

An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the carrier is credited to the work days immediately preceeding and following such holiday."

The Organization argues that Claimant received ten minutes of pay on December 23 and eight minutes pay on December 26. He met the requirements of Article 2, Section 3. Carrier credited compensation to the day before and the day after the holiday. Claimant must be paid.

This case presents perhaps the most extreme situation that could develop under Article 2, Section 3. We have a claim based on ten minutes on the clock the day before the holiday and eight minutes the day after. The employe stayed on the property only long enough to hear the safety rules read and then he clocked out and went home.

It is unrefuted that Claimant handed his time card to the Foreman on December 23 before he took the phone call from his wife wherein it is alleged that she and the children were ill and he had to go home. It is also unrefuted that Claimant did not perform any work on either December 23 or December 26.

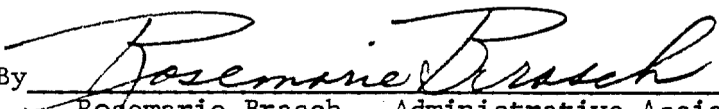
While the Board has over the years attempted to apply contract language as it is written, we have also tried to apply the language in a fair, equitable, and reasonable way so that the intent of the parties is carried out. It is the opinion of the Board in this instance that the intent of the parties would be undermined if this Board were to issue a sustaining award in this case. The uncontroverted facts of this record supports Carrier's contention that Claimant was indeed attempting to "sharp shoot" the agreement and never did intend to perform any service on December 23 and December 26, 1979. This Board, under the guise of a literal interpretation of the agreement, could not condone such an action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of September, 1982.