

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9908
Docket No. 9207
2-SLSF-CM-'84

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the provisions of the current controlling agreement when they failed to pay Claimants for holiday pay on January 1, 1980.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate the following at the straight time pro rata rate for their respective positions as Carmen, eight (8) hours each for January 1, 1980, New Years Day.

G. J. Bacon	R. D. Irby	J. A. Noblitt	R. D. Rose
C. K. Mericle	F. J. Peavey	C. W. Hubbard	J. H. Robinson
J. C. Peacock	R. J. Englert	R. L. Murphy	N. A. Bishop
C. V. Smith	J. D. Bowers	R. A. Shelton	C. M. Burnett
D. M. May	D. G. Hinkle	D. B. Lane	O. R. Kjar
T. R. Whaley	R. D. Davis	L. D. Cloyd	J. L. Harris
A. W. Doweden	D. W. Butler	P. W. Harkins	M. A. Hailey
T. F. Stull	C. W. Brown	L. J. Mease	R. J. Farrell
J. R. Vermule	D. L. Walker	J. A. Taylor	F. D. Ventress
C. S. Jameson	W. E. Craig	B. D. Stewart	R. L. Snow
C. N. Hampton	M. E. Baker	J. E. Watts	L. L. Cantrell
R. T. McArthur	T. H. Sims	C. A. Romines	M. B. Grant
R. L. Hinkle	D. L. Phipps	R. C. Workman	L. R. Workman
G. P. Donnell	E. D. Allen	J. E. Elbert	K. W. Taylor
S. L. Jones	G. W. Spies	S. D. Stewart	R. R. Vaughan
G. J. Snyder	W. E. Heavin	F. M. Donnell	J. L. Julian
H. E. Schroeder	J. S. Franke	J. W. Fry	L. G. Wasson
G. L. Cheek	B. E. Cobb	D. E. Eutsler	P. M. Lorenzen
D. W. Anderson	D. L. Hubbard	L. W. McNerney	G. W. Groeteke
D. L. Mettlach	C. C. Burton	R. S. Chittenden	J. B. Dahlman
J. B. Johnston	B. S. Walton	T. T. Thomas	D. B. Taylor
T. G. Hoflund	J. L. Murphy	R. J. Taylor	C. D. Whitehead
F. T. Williams	R. D. Harlan	L. E. Nichols	R. Carpenter
H. E. Whitehead	D. J. Harvey	D. T. Gemeinhardt	R. T. Bouchard
J. E. Elbert	R. L. Scaggs	M. A. Sanders	R. E. Peavey
D. McCleary	O. W. Banks		

Promoted Carmen:

J. R. Roberds	R. T. Eddy	C. A. Fisher	Y. D. Scott
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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 employes 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.

The relevant facts of this claim are not in dispute. On December 14, 1979, Carrier furloughed some 110 Carmen at its Springfield, Missouri facility. During that month, 106 of the Carmen, Claimants herein, worked a total of nine or ten days each. In addition, Claimants were given holiday pay for December 24, 1979 and December 25, 1979. However, Claimants were not given holiday pay for January 1, 1980.

The Organization contends that Carrier's failure to pay Claimants for the New Year's Holiday violates Article II, Section 1(c) of the Non-Operating National Holiday Agreement. That section reads, in relevant part:

"(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof, provided for in paragraph (b) above, provided (i) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday ...

A regularly assigned employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employe is not assigned to work but is available for service on such days."

The Organization points out that all Claimants worked either nine or ten days in December 1979. In addition, all Claimants were given holiday pay for December 24 and 25. Thus, all Claimants were compensated for eleven or twelve days during that month.

In the Organization's view, all Claimants are thus entitled to holiday pay for January 1, 1980 since they were compensated for "11 days or more of the 30 calendar days immediately preceding the holiday," as required by the first paragraph of Article II, Section 1(c).

In addition, the Organization argues that the full text of that provision mentions only "compensation paid him" and not "services performed." According to the Organization, Claimants need only have been compensated for eleven days in the month prior to the New Year's Holiday; they were not required to perform services for those eleven days. Thus, the Organization asks that the claim be sustained. As remedy, it seeks eight hours' pay, at the straight time pro rata, for the Claimants.

Carrier, on the other hand, asserts that the Agreement was not violated here. It points out that as furloughed employees, Claimants were "other than regularly assigned employees." Thus, in Carrier's view, Claimants had to perform actual service in order to be credited with "11 or more of the 30 calendar days immediately preceding the holiday...." Since December 24 and 25 were holidays and not work days, Carrier concludes that all Claimants performed service for only nine or ten days during December 1979. Accordingly, Carrier asserts that it properly denied the Claimants holiday pay for January 1, 1980.

The sole issue before this Board is whether holiday pay is "compensation for service" under Article II, Section 1(c) of the Non-Operating National Holiday Agreement. It is clear that such pay is not compensation for service and that the claim must fail. This is so for a number of reasons.

First, the language of that provision is clear and unambiguous. It requires that Claimants must have been compensated for service on eleven of the 30 calendar days immediately preceding the New Year's Holiday. (emphasis supplied) The term "service" can mean but one thing - actual work. Here, Claimants did not work on December 24 and 25, 1979. Thus, Claimants were not compensated "for service" on those two days.

Second, awards cited by Claimants are not relevant here. Those awards provide that vacation days are recognized as days for which "compensation for service" is granted. However, vacation days are earned as a result of the performance of work - a specified number of days in each of a number of years. Thus, vacation days are compensation for service except that the payment for such service is deferred until the employee takes his vacation. Thus, a vacation day cannot be equated to a holiday, on which no work, actual or deferred, has been performed.

Finally, while the phrase "compensation paid him" does appear in Article II, Section 1(c), that phrase applies only to a "regularly assigned employee." Here, all Claimants were "other than regularly assigned employees." Thus, their holiday entitlement is covered under the first paragraph of that provision which, as noted above, requires "compensation for service" on the appropriate number of days. Accordingly, since Claimants did not provide "service" on eleven or more of the thirty calendar days immediately preceding January 1, 1980, they are not entitled to holiday pay for that day.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Nevers - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984