

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, A.F.L. - C.I.O.
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Appendix "D" Nonoperating (Shop Crafts) National Holiday Provisions of August 21, 1954 as amended when they did not compensate Superior Carman T. Andrews for November 12, 1979, Veterans Day.

2. That accordingly the Burlington Northern, Inc. compensate Carman T. Andrews in the amount of eight (8) hours at the straight time rate.

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. In November 1979, Claimant, T. Andrews, was regularly assigned as a Carman to Carrier's Superior, Wisconsin facility. His work week was Monday to Friday, with Saturday and Sunday as rest days. On November 5, 1979, Claimant was absent from work. From November 6 through November 9, 1979, Claimant was on vacation. November 10 and 11 were Claimant's rest days. November 12 was a legal holiday. On November 13, 1979, Claimant returned to work his regular assignment. Claimant was not paid for the legal holiday, November 12, 1979.

The Organization contends that Carrier's failure to compensate Claimant violates Sections 1 and 3 of Appendix "D" of the current National Holiday Agreement of August 21, 1954 and amendments thereto. Those sections read, in relevant part:

"Section 1.

Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions thereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours pay at the pro rata hourly rate for each of the following holidays:

Veteran's Day

"Section 3

A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereon if compensation paid him by the Carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's work week, 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. (emphasis supplied)

The Organization notes that Claimant was on vacation on the workday immediately preceding the holiday. Claimant was paid for that vacation day. Thus, the Organization argues that the compensation paid Claimant for that day "was credited to the workday(s) immediately preceding (the) holiday..." In the Organization's view, then, Claimant has complied with Section 3 and should, therefore, be paid for the legal holiday, November 12, 1979.

Carrier, on the other hand, interprets Section 3 differently from the Organization. It argues that under Section 3 an employee must have his compensation credited to an actual work day. Here, Claimant had a vacation day immediately preceding the legal holiday, excluding, of course, his two rest days. Carrier insists that a vacation day is simply not a work day. Thus, Carrier concludes that Claimant is not entitled to pay for the legal holiday, November 12, 1979.

The single issue to be decided is whether compensation paid Claimant was credited to the workday immediately preceding the legal holiday. We believe that it was not that the claim should fail. There are several reasons which lead us to this conclusion.

First, Claimant was on vacation from November 6 to 9, 1979. Those days, then, were vacation days, not work days. In negotiating Section 3, the parties chose their words carefully. They mandated that compensation be credited for a "work day" and not any other kind of day. Clearly a "vacation day" is not a "work day" even though an employee is compensated for that vacation day.

Our finding is consistent with Third Division, Award No. 23831. There, claimant was on standby on the days immediately following the legal holiday. In addition, he was paid four hours of pay for each of those days. In rejecting that claim, that Board held, "While Claimant was on standby status on the Saturday and Sunday following the holiday and received compensation for that status, those days were not regular work days, as that term is applied in this industry." Thus, it is clear that if "stand-by days" are not regular work days under Section 3, then surely "vacation days are not regular work days within the meaning of that section.

Furthermore, we disagree with the Organization's contention that all compensation under Section 3 qualifies for holiday pay, with the single exception of compensation for sick days. We note that Section 3 does provide that, "Compensation paid under sick-leave rules or practices will not be considered as compensation for the purposes of this rule." However, the rule itself is applicable only for generally recognized work days. An exception is made when sick leave is used during that work day. Here, the day in question was a vacation day. As such, it simply did not fall within Section 3's requirement that compensation be credited to a "work day."

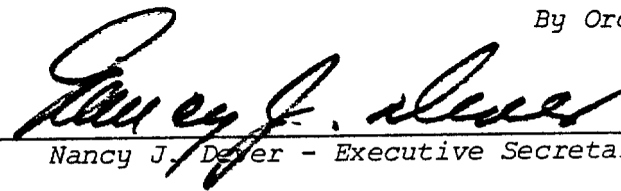
Finally, we point out that even if Claimant's vacation days are disregarded, he was absent from work on November 5, 1979. Thus, it, too, was not a "work day" as contemplated under Section 3. Accordingly, and for the foregoing reasons, the claim must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1984