

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carman Painter B. L. Crawford was not properly compensated for the New Years holiday on January 1, 1979, in accordance with Rule 4 of our current working agreement.

That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman Painter B. L. Crawford eight (8) hours pay at pro rata rate for the New Years holiday of January 1, 1979, in accordance with Rule 4 of our current working agreement - which Carrier has violated.

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.

Claimant is employed as a Carman Painter at Waycross, Georgia. He was paid vacation compensation for the period December 25, 1978 through December 29, 1978, and then returned to work on January 2, 1979. He did not work on Saturday, December 30, 1978 nor on Sunday, December 31, 1978 since these days were normal rest days and he observed January 1, 1979 as New Year's holiday. On January 27, 1979, the Local Chairman submitted a claim contending that Carrier violated Rule 4, Section 3 of the Controlling Agreement since Claimant was not paid holiday pay for the New Year's holiday. It is Claimant's position that he is entitled to this compensation since the vacation pay he received is credited workday service and December 29, 1978 was the immediate workday preceding the New Year's holiday.

Rule 4, Section 3 which is the basis for Claimant's petition is referenced in part as follows:

"Section 3. A regularly assigned employee 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 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 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."

Moreover, contrary to Carrier's position that he was on sick leave through January 1, 1979, he avers that he was released to return to work before December 29, 1978 and was paid regular vacation compensation during the December 25, 1978 to December 29, 1978 period.

Carrier contends that he was on sick leave from November 4, 1978 through January 1, 1979 and thus, not entitled to holiday compensation since he was off sick preceding his vacation. It argues that pursuant to Rule 4, Section 7 of the Controlling Agreement, Claimant was marked off sick on December 22, 1978, the last qualifying day preceding his vacation period, and definitely ineligible for holiday compensation. It asserts that bereavement leave, for example, does not count as a qualifying day for holiday pay and thus, by extension, it was not intended that vacation pay would qualify an employee for holiday pay. Rule 4, Section 7, which Carrier relies on for this position is quoted as follows:

"Section 7. 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."

In our review of this case we concur with Claimant's position. The holiday in this instance did not fall within Claimant's vacation period and as such, the qualifying criteria regarding holiday compensation is inapplicable. Claimant is not requesting compensatory payment for a holiday that fell within his assigned vacation period, he is seeking holiday compensation in accordance with Rule 4, Section 3, which requires as a prerequisite qualifying condition that the compensation paid by Carrier is credited to the workdays immediately preceding and following such holiday.

Appended to this Rule is a note which states that compensation paid under sick leave rules or practices will not be considered as compensation for purposes of this Rule. Since this note relates to Rule 4, we must conclude that sick leave compensation on the days immediately preceding and following a holiday would not be considered credited service. There is no specific prohibition against vacation compensation and consistent with our interpretative assessment in Second Division Award No. 5102, vacation pay is compensation for service. We articulated this same view in Second Division Award 7467.

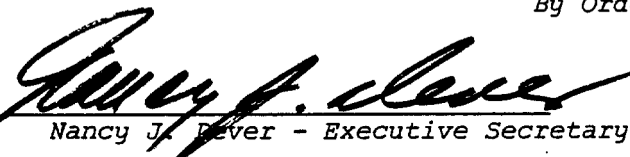
In the case before us, we have no indisputable evidence that Claimant only received sick leave payment for the week of December 25, 1978 through December 29, 1978, but evidence that he received vacation pay. Since we have held that vacation pay is compensation for service and by extension herein, a credited workday, Claimant is entitled to the holiday pay requested since the compensation paid him was credited to the workday immediately preceding the New Year's holiday and he worked on January 2, 1979, the day immediately following the holiday. Under these circumstances, we cannot deny him this compensation.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1984.