

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

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it failed to compensate Electrician T. A. Veres Holiday Pay for Christmas Eve Day and Christmas Day, December 24, and 25, 1982.
2. That accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Electrician T. A. Veres in the amount of sixteen (16) hours at the straight time rate of pay, because of said violation.

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 instant dispute involves Article II, Sec. 3 of the current Agreement, which states,

"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."

Claimant T. A. Veres called in sick on December 22, 1982. He appeared for work on December 23rd, but after one hour he told his Foreman he was too sick to work and went home. He did not work on December 24th or 25th, even though he was scheduled to work on those days. He returned to work on

December 26th and worked the entire day. The Carrier has refused to pay the Claimant for December 24th and 25th, "due to his not performing compensable work on the day before the holiday period." The Carrier states that its denial of holiday pay is not due to the Claimant's failure to work on the actual holidays, as scheduled.

The Carrier accuses the Claimant of attempting to "sharpshoot," the Agreement, arguing that the Claimant never intended to work on the day before the holidays. The Carrier directs us to Second Division Award No. 9307, in which the Board declined to award holiday pay to a Claimant who worked only ten minutes on the day before the holiday and eight minutes on the day after the holiday.

The facts in the instant case are sufficiently different from those in Award No. 9307, however, to warrant a different result. Here the Claimant did work a full day on the day after the holidays. Furthermore, he did call in sick on December 22, two days before the holiday and the day before the qualifying day. His absence on December 22nd, makes it more likely that his leaving only on December 23rd was due to sickness and not to a desire simply to circumvent the requirements of the Agreement.

Although we would not condone the "sharpshooting" described in Award No. 9307, the Carrier has not established that the same type of behavior prevailed here. The letter to the Claimant dated January 4, 1983 concerning his absenteeism and tardiness in December, 1982 does not conclusively establish that his leaving work on a certain day (December 23rd) was due to his difficulty in adjusting to the third shift, rather than to an illness. In fact, December 23rd is not one of the dates discussed in the letter. Furthermore, difficulty in adjusting to a new shift might explain the Claimant's total absenteeism or his tardiness on certain days, but it would hardly explain his early departure from work on a day on which he arrived at his shift on time.

The language of the Agreement does not require that a specific amount of compensation be paid to an employee on a qualifying day in order for him to earn holiday pay. The Organization has sustained its burden of proof that the Claimant received some compensation for each of the qualifying days at issue here. Absent the type of "sharpshooting" described in Award No. 9307, the Carrier must pay holiday pay to employees when they work on the qualifying days. Accordingly, the Board concludes that the instant claims are meritorious.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1985.