

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13522

Docket No. 13388

00-2-98-2-88

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Indiana Harbor Belt Railroad Company violated the current Working Agreement when they failed to compensate Carman M. Cole for holiday pay on Monday, May 26, 1997.
2. That the Indiana Harbor Belt Railroad Company (hereinafter referred to as the Carrier) be ordered to compensate Carman M. Cole (hereinafter referred to as the Claimant) eight (8) hours of pro rata rate of Carman’s straight time pay as provided by Supplement “A”-Holiday Pay Provisions of the current Working Agreement.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On Sunday, May 25, 1997 the Claimant notified his supervisor by telephone of the death of his mother-in-law, stating he would be off duty on bereavement leave. Monday, May 26, 1997 was a paid holiday, which the Claimant had been previously scheduled to work.

Originally, the Claimant was given to understand that he would receive three days' bereavement pay for May 26-28, but would not receive holiday pay for May 26. During the claim handling process, it was determined that the Claimant did receive holiday pay for May 26 and was allowed two days of bereavement pay for May 27-28. It is the Organization's position that the Claimant is entitled to holiday pay for May 26 as well as three days' bereavement pay (May 26-28). Because the Claimant received the claimed holiday pay, the issue is whether he was also entitled to bereavement pay for May 26 (as well as the bereavement pay he received for May 27-28).

The Bereavement Leave provision of the Agreement reads in pertinent part as follows:

"Bereavement pay will be allowed . . . not to exceed three calendar days following the date of death. In such cases, a minimum basic day's pay . . . will be allowed for the number of working days lost during bereavement leave."

This provision does not guarantee three days of paid bereavement leave; rather, it is granted "not to exceed" three calendar days following the date of death (which here, presumably, was May 25). In the Claimant's circumstances, the three-day bereavement period was limited to May 26-28. The bereavement leave provision also limits pay to "the number of working days lost." However, the Claimant already was compensated for May 26 by the granting of holiday pay. Thus, May 26 was not among "the number of working days lost," because the Claimant was otherwise compensated for that day by holiday pay.

Put another way, the bereavement leave provision is not a fixed benefit; it is written to protect an employee from loss of pay during a specified time period.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 27th day of July, 2000.