Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13841
Docket No. 13733
05-2-04-2-10

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU
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(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That the Burlington Northern and Santa Fe Railway Company has violated the National Holiday Agreement when they arbitrarily denied Denver, Colorado Carman Travis Herrin Holiday pay for New Years Eve Day, December 31, 2002.

2. That; accordingly, the Burlington Northern and Santa Fe Railway Company be ordered to compensate Carman Travis Herrin eight hours pay at the pro rata rate of pay in effect on December 31, 2002."

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.

As background, the Claimant worked the date of December 28, 2002. December 29 and December 30, 2002, the Claimant was on vacation. December 31, 2002 and January 1, 2003, the Claimant was on his rest days. On January 2, 2003, the Claimant underwent surgery and went on medical leave.

This is a dispute on holiday pay. The parties are in agreement that since the Claimant worked December 28, 2002, he qualified for working the workday immediately preceding the holiday. The parties also agree that had the Claimant worked January 2, 2003, he would have qualified for both the holiday of December 31, 2002 and January 1, 2003. However, they disagree upon compensation for the first day of the double holiday.

The Organization maintains that the Claimant was available for service on New Years Day, January 1, 2003 and therefore qualified for holiday pay for December 31, 2002, New Years Eve Day. As the Claimant bridged the holiday working before and available to work after December 31, 2002, he is entitled to pay. The Organization points to the TCU's long standing interpretation entitled "Qualifying for Holiday Pay", Section 3 of Appendix "D" of the National Vacation Agreement and Award support (Second Division Award Nos. 6474, 11308).

The Carrier maintains that the Claimant was on his rest day, January 1, 2003. It maintains that this is not a work day and therefore does not qualify the Claimant for holiday pay on December 31, 2002. Nor does it read Section 3 of Appendix "D" as supporting this interpretation. As for the TCU's written and distributed interpretation, it does not "prevail over the clear language of the Agreement." The Carrier argues that Awards support its interpretation (Third Division Award Nos. 23831, 28027).

The dispute involves the interpretation of Section 3 of Appendix "D" which states as follows:

> "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." (Emphasis added)

The Board has carefully read the National Agreement. We note that the Organization maintains that there is no requirement that the Claimant must work the second holiday to qualify for the first, but only that he be "available" to work.

The Organization's argument that he was "available" is not found persuasive. First, the TCU's interpretation, while supportive, is not shown to have any past practice, application relied upon by the parties, joint agreement or relevance to ambiguous language. Second, the above language and the full Agreement refers to workdays and not rest days. Third, the Awards support this conclusion.

In Second Division Awards 6474 and 11308, the disputed holidays in those decisions were workdays for the Claimants. The language above wherein the "employee is not assigned to work but is available for service" is inapplicable to the instant case. It is also at the core of Special Board of Adjustment No. 1101, Award No. 91, which sustained a claim due to the fact that, "January 1, ... was a day which would have been a regular work day for the Claimant had the position not been laid in for the holiday."

The Board is persuaded that the language of the National Agreement (which is always before us), including that language directly following the above quoted Section 3 of Appendix "D", which states that: "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 . . ." is meant to distinguish *work days* from *rest days*.

In this instant case, the Board finds that the Claimant did not work January 1, 2003 because that day was his rest day. A rest day does not mean that he was available but not called and therefore entitled to consider it a work day following the holiday. Nor does the language of the Agreement indicate that he was not assigned but available for service, as this was a rest day for the Claimant.

Accordingly, the Claimant is not entitled for holiday payment due to the fact that January 1, 2003 was his rest day. The Board would have granted him holiday

pay for December 31, 2002, if January 1, 2003 were a work day for the Claimant, even if the Carrier had blanked his job due to the holiday. Under these instant circumstances, the claim must be denied.

AWARD

Claim denied.

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 1st day of April 2005.