

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(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 failed to compensate St. Cloud Carmen S. W. Decker and J. E. Lanz for July 4, 1981, Independence Day.
2. That, accordingly, the Burlington Northern, Inc. compensate Carmen Decker and Lanz in the amount of eight (8) hours at the straight time rate for their rate and class.

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 Organization contends Appendix 3 D of the Nonoperating (Shop Crafts) National Holiday Agreement is controlling and quotes the following provisions thereof:

"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.

(Emphasis ours)

Except as provided in the following paragraph, all others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service.

Note: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

The circumstances relative to the claim are described in the Carrier's submission as follows:

"The claimants, S. W. Decker and J. E. Lanz were employed as carmen at St. Cloud, Minnesota. Friday, June 26, 1981 was a regularly scheduled work day for the claimants, but the Carmen's Organization went on strike against the Carrier on that day and the claimants did not work on that day. A United States District Court issued a temporary restraining order against the strike on June 26 and the strike was then ended. June 27 and 28 were days of rest for the claimants and on Monday, June 29, they started on vacation for one week, returning to work on Monday, July 6, 1981. They claimed pay for the July 4 holiday which was declined on July 7, 1981 because they did not work on June 26 which was the work day immediately preceding the vacation period."

The Organization states the pivotal question in this dispute is:

"Is vacation time considered as compensation as set forth in Section 3 Appendix D?"

The Carrier contends, on the other hand, that the controlling issue is whether the vacation day i.e., July 3 or the regular scheduled work day, June 26, is the work day immediately preceding the holiday.

The term "workdays" as used in Section 3 above is clarified in Section 7 (a) of Appendix D, when both sections are studied as related to the question raised in this case the conclusion becomes clear. The provisions of Section 7 (a) Appendix D are as follows:

"When any of the seven 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." (Emphasis added)

The claim confuses compensation for service with compensation credited for "workdays" for qualifying purposes as set forth clearly in Section 3 and further clarified in Section 7(a). Section 3 specifies that:

"A regularly assigned employee shall qualify for holiday pay provided ... if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday. ..."

Section 7(a) further specifies that workdays immediately preceding the vacation shall be considered the "workdays" for qualification purposes.

There is no dispute that the claiming employees were regularly assigned or that they worked on the first days immediately following their vacations. The dispute centers on the Organization's contention that being on vacation on July 3 they received vacation compensation for July 3, the day immediately prior to the July 4 holiday.

Under the provisions of Sections 3 and 7(a) compensation for workdays is not synonymous with compensation for service. Holiday pay, like vacation pay, is a benefit for services rendered during the year. This is not to say that holiday pay is the same as compensation for workdays immediately preceding a holiday as required by the clear language of the rules quoted above. In order for a regularly assigned employee to qualify for holiday pay, compensation must be credited to him by the Carrier for workdays immediately preceding the holiday. The Claimants did not qualify under these provisions and the Organization is in error in contending Claimants met the qualifying requirements of Sections 3 and 7 (a) when they received vacation compensation for July 3. That July 3 would have been a workday if they had not been on vacation is irrelevant. The fact is that their last scheduled work day prior to the start of their vacations was June 26, the date on which they elected not to work because of the strike. Accordingly, they were not credited or compensation for that day.

This same conclusion was reached in an almost identical dispute by Public Law Board No. 3305, Award No. 3, as follows:

"We are compelled to find that Mr. Charton does not qualify for holiday pay for July 4, 1981 under Section 3 of the National Holiday Agreement because no compensation was credited to him for the workday immediately preceding the holiday, which workday was Friday, June 26, 1981. The controlling agreement language sets forth the qualifying conditions for holiday pay based on "workdays" immediately preceding and following the holiday. July 3, 1981 was a vacation day for Mr. Charton. A vacation day is clearly not a workday in the railroad industry."

A similar conclusion was reached in Second Division Award No. 9977 involving the same parties as in the instant case:

"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 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.

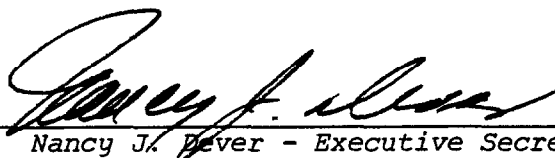
*** Claimant was on vacation from November 6 to 9, 1979. Those days, then, were vacation days, not work days. In negotiating Section 3, the parties chose their words carefully. They mandated that compensation be credited for a 'work day' and not any other kind of day. Clearly a 'vacation day' is not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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1984.