Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10534
Docket No. 9979
2-BN-CM-'85

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
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated the holiday provisions of the National Agreement of August 21, 1954 and admendments (sic) thereto provided in the National Agreements of August 19, 1960, November 21, 1964, February 4, 1965 and September 2, 1969, when they arbitrarily denied holiday pay for July 4, 1981 to its employees, in violation of Rule 6 of the current controlling agreement effective January 1, 1945, amended June 1, 1952 and revised April 1, 1971.

2. That accordingly, the Burlington Northern Railroad compensate Carman R. J. Bash, D. L. Branstetter, J. E. Cobb, H. L. Isbell, J. B. Johnson, G. D. Montgomery, R. E. Peavey, J. L. Wallin and D. L. Hubbard eight (8) hours each at the carman welder's straight time pro rata rate.

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 pivotal issue in this dispute is whether or not compensation paid Claimants was credited to the workday immediately preceding the July 4, 1981 holiday. Claimants worked their first workday immediately following the July 4th holiday and were on scheduled vacation leave from June 29, 1981 through July 3, 1981 or from June 29, 1981 through July 10, 1981.

In defense of their petition, Claimants assert that since they received vacation compensation for the workday immediately preceding the July 4th holiday, they were entitled to holiday pay pursuant to Rule 6(b), Section 3 of the Controlling Agreement. This provision reads:

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 added)

In essence, Claimants argue that vacation compensation is considered payment for a workday within the context of Section 3 and thus, they are entitled to holiday pay.

Carrier maintains that Claimants did not meet the qualifying conditions for holiday pay since they did not work on June 26, 1981, their actual workday under the Controlling Agreement. It notes the Carmen's Organization had conducted a strike on June 26, 1981 and accordingly, Claimants did not work on that day. It asserts that Section 7(a) of Rule 6(b) is interpretatively controlling herein, since this provision clearly establishes that only actual "workdays or days" immediately preceding and following the employees vacation period shall be considered "workdays or days" preceding the holiday for purposes of qualification. It contends that since June 26, 1981 was the workday immediately preceding Claimants' vacation period and since Claimants were not credited compensation for this day, Claimants did not qualify for the July 4, 1981 holiday pay. It avers that a vacation day is not a workday. Section 7(a) is referenced 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."

In our review of this case, we agree with Carrier's position. In a recent Second Division Award dealing with the same basic issue and involving the same Organization and Carrier, the Board held that a vacation day is not a workday under Section 3, even though an employee is compensated for that vacation day. See Second Division Award No. 9977. In the case at bar, there is nothing in the record to warrant a distinguishable assessment of Award 9977 since the salient question is the same. Claimants were on strike on June 26, 1981, their actual last workday and did not receive compensation for this concerted self help action. Moreover, and importantly, consistent with Second Division Award No. 9977 a vacation day is not considered a workday under Section 3 of Rule 6(b) and Carrier's denial of Claimants' petition was appropriate under the cited rules.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

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