

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, Section 3 Holiday Provisions, when Carman D. L. Lang was denied payment for service performed on December 27, 1983 when he reported to work after the starting time of his regular shift and was denied the right to work the balance of the shift on that date resulting in the loss of pay for the Christmas Eve and Christmas Day holidays.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman D. L. Lang for two and one-half (2 1/2) hours for December 27, 1983 plus two (2) eight hour days for the Christmas Eve and Christmas Day holidays.

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 Carrier has a Rule which governs conditions of payment for holidays. It reads:

"A regularly assigned employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the Carrier is credited to the work days immediately preceding and following such holidays."

Claimant had worked the day of December 23, the day before the Christmas Eve and Christmas Day holidays. His next assigned day was December 27. On the morning of December 27 he did not feel well and he called the Master Mechanic to report that he would not be coming in for work. Later in the day Claimant felt better and arrived for work at about 12:30 P.M. His shift had started at 7:00 A.M.

The facts are undisputed until this point. The Claimant states that he was told by the Master Mechanic that he could start work at 1:00 P.M. and continue until 3:00 P.M., the end of the shift. He states that he assisted some fellow employees on a welding project.

The Master Mechanic states that he told Claimant that he would have to check with higher authority. He told Claimant to step outside to see how he felt. In a short while he had another Management employee inform Claimant that higher authority had not approved his working, thus he would not be permitted to work.

A letter in the record by the General Car Foreman stated that he had observed Claimant standing outside the office talking to some fellow employees. He emphatically stated that Claimant performed no work and had no tools with which to do work.

The Rule is straightforward. If an employee performs any compensated service on the before and after dates, he is to be paid for the holidays. Since the compensation is not qualified, the Rule must be read to include any amount of compensation. Carrier states that Claimant has not been paid, but this statement is self-serving in that the Carrier has made the decision not to pay him. The letter stating that the Claimant had done no work is not helpful. If he was authorized to be "on the clock" whether he had performed work is not determinative of the holiday pay.

What is important to our decision is the diametrically opposed statements by the Claimant and the Master Mechanic. If the statement of Claimant is true, he would be entitled to the holiday pay. However, if the statement of the Master Mechanic is true, Claimant was not authorized and did not do any compensated service and is entitled to no holiday pay.

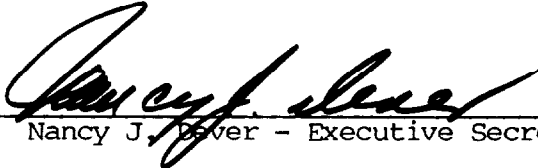
An Appellate Board, as this, has only the opportunity to review what is in the record before us. We have none of the usual aids at our disposal that make the difficult job of assessing credibility more reliable. We have not had the opportunity to hear the tenor of witness voices nor to observe their demeanor when they testify. This Board is unable to make a judgment about the veracity of the evidence. Many Awards have held that in a situation whereby the outcome depends on the credibility of opposing statements, this Board can only find that the party bringing the Claim has not provided us with enough evidence to resolve the factual issues and, therefore, has not carried its burden of persuasion. See Second Division Awards: 10764, 9450 and 9094. We agree with this line of reasoning and find that the Claim cannot be sustained.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1987.