Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11198
SECOND DIVISION Docket No. 10948
2-MP-EW-'87

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Article III, Section 3 of the National Agreement effective July 1, 1960, which did amend the June 1, 1960 controlling agreement, when they denied Electrician J. C. Bussard his contractual rights under the agreement to receive proper compensation for the Holiday, September 5, 1983, at Kansas City, Missouri.

2. That, accordingly, Carrier be ordered to compensate Electrician, J. C. Bussard eight (8) hours at the straight time rate of pay in effect for September 5, 1983.

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.

Claimant, an Electrician on the third shift, 11:00 P.M. to 7:00 A.M., was regularly assigned a workweek of Saturday through Wednesday with rest days Thursday and Friday.

Claimant laid off Saturday, September 3; properly requested and was granted a personal leave day on Sunday, September 4; did not work on the Labor Day holiday Monday, September 5; and worked his regular assignment Tuesday, September 6, 1983.

At issue here is whether or not Claimant is entitled to compensation for holiday pay when he elected to take a personal leave day on the workday

preceding a holiday. Timeliness is not an issue. nor is it disputed that Claimant was entitled to personal leave day privileges or that he worked on the first day immediately following the holiday.

Article III, Section 3 of the National Agreement states in pertinent part:

> "A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation is credited to the workdays immediately preceding and following such holiday or if the employe 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 employe'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."

Carrier contends that a personal leave day by definition is not a workday; that a workday means a workday-not a compensable day before a holiday. Therefore, Carrier contends Claimant does not qualify because he did not actually work the regularly scheduled workday prior to the Labor Day holiday, i.e., Saturday, September 3.

In support of its position, Carrier asserts the Organization was a party to discussions and an accord reached between the National Carriers and almost all nonoperating Organizations in Washington, D.C. on March 10, 1982, concerning application of personal leave provisions in relation to holiday qualifications.

In situations where personal leave days are taken either immediately preceding or following a holiday, Carrier asserts the parties agreed to consider the qualifying day for holiday purposes to be the work day immediately preceding or following the personal leave day.

As evidence thereof, Carrier submitted questions and answers relative to Application of Bereavement Leave provisions contained in the 1978 National Agreement, asserting the Application of the Bereavement Leave provision is consistent with personal leave provisions.

The Organization contends there are no provisions in the Agreement expressly excluding personal leave days as being a technical workday for the purpose of qualifying for holiday pay.

Further, the Organization denies that it attended a meeting in Washington, D.C. referred to by Carrier, or that it was a party to or in Agreement with any Interpretation or instructions arising out of said meeting.

Both parties cite Awards from this Board that pertain to their positions.

After a careful review of the record, the Board notes there is no record that the Organization met with Carrier. In asserting that an Agreement was reached as an outcome of a meeting to treat personal leave in the same manner as the Application of Bereavement leave days, the burden is on Carrier to substantiate its affirmative defense with some probative evidence.

Since no proof was submitted, the Board rejects Carrier's contention that a personal leave day preceding or following a holiday should not be considered as the qualifying day for compensation purposes.

It is clear that Claimant was credited compensation for the workdays immediately preceding and following the holiday. The fact pattern is consistent with Second Division Award 10033, wherein the Board held as follows:

> "We of course, cannot know what the parties who made the agreement had in mind at the time the holiday Agreement was negotiated, but we cannot see any other meaning to the the words 'work day' except a day that such employe would normally work on. The Agreement also makes it clear that the employe need not necessarily work the day, but only that he receive compensation for it. A personal leave day would therefore, be a work day and because this employe did receive compensation for it, he is entitled to the holiday pay."

Accordingly, and for the foregoing reasons, the Claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 4th day of March 1987.

CARRIER MEMBERS' DISSENT
TO
AWARD 11198, DOCKET 10948
(Referee Stallworth)

The doctrine of stare decisis is centuries old and undoubtedly is entitled to great respect and adherence. The doctrine, however, is two sided. On one side is the recognition that orderly decisional process requires that once a principle has been decided by a competent tribunal the principle be followed in future cases. On the other side, and of equal importance to the continued effectiveness of the doctrine, it likewise has been recognized from the earliest days of the doctrine, that stare decisis is not the equivalent of res judicata and tribunals are not required to follow blindly a prior decision which is palpably erroneous.

We believe the latter side of the coin was ignored in this case. In essence, the Majority found itself bound to follow Second Division Award 10033, and placed the Carrier in the position of having to establish as an "affirmative defense" the existence of additional factors present in this dispute which were not present in Award 10033. The fact that there was not support for Award 10033 in the provisions of the National Personal Leave Agreement, the National Holiday Agreement, or in common sense, was given no consideration. The Dissent to Award 10033, incorporated herein, demonstrated the egregious error of the Majority's decision in that case.

The issue surrounding the meeting in Washington, D.C. is the only matter considered at any length by the Majority notwithstanding that it represented only a peripheral and incidental point made by the Carrier. Indeed, the Majority does not even mention the Carrier's argument that its position is supported not only by the undisputed application of the National Bereavement Leave Agreement but, also, by the Board's Awards interpreting

the provisions of the National Vacation Agreement. In both areas, it is now well settled that neither pay for bereavement leave or a vacation day is considered "compensation" for a "workday" under the Holiday Agreement.

We are confident that the "rationale" underlying Award 10033 eventually will be given close scrutiny and will receive the "finality" it truly deserves.

We dissent.

M. W. Fingerhut

R. L. Hicks

M. C. Lesnik

P. V. Varga

J. E. Yost