

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13340

Docket No. 13130

98-2-96-2-32

The Second Division consisted of the regular members and in addition Referee Ekehard Muessig when award was rendered.

(International Association of Machinists and
(Aerospace Workers (District 19)

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“(1.) The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rules 4-B-3, 8-H-1, and Past Practice and Customs.

(2.) Accordingly, the claimant is entitled to the remedy as requested. Additional eight (8) hours pay at the applicable straight time rate of pay for the legal holiday of July 4, 1994.”

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.

This dispute is over the question of whether the Claimant should be paid eight hours pay at the straight time rate of pay for the legal holiday of July 4, 1994.

The relative facts show that the Claimant held a regular Machinist Grade "E" position, working a Monday through Friday shift, 7:00 A.M. to 3:00 P.M., at the Carrier's Hollidaysburg Car Shop, Pennsylvania. The claim arose because the Claimant served in the Army Reserve from June 16, 1994 through Wednesday, June 29, 1994. He then took vacation days for Thursday, June 30 and Friday, July 1. Saturday, July 2 and Sunday, July 3, 1994 were his regular rest days. Claimant's position did not work on Monday, July 4, a holiday. He returned to work on Tuesday, July 5, 1994.

Rule No. 4 - Time Allowance, paragraph 4-B-3 (b) and (c) are controlling in this matter. In pertinent part, it reads as follows:

"4-B-3. (b) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid him by the Company is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following the rest days shall be considered the workday immediately following the holiday. 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.

* * *

(c) When any of the holidays enumerated in Rule 4-B-2, or the day observed falls during the employees vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for in paragraph (a) of this rule 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. An employee's vacation period will not be extended by reason of any of the ten (10) recognized holidays, or the day observed."

Resolution of this dispute, simply stated, depends on which day immediately preceding the July 4th holiday may properly be considered a "workday." The Carrier contends that it was June 29, 1994, while the Organization maintains that June 15 was

the last “workday.” The Board finds, under the particular circumstances of record, that the Organization’s arguments are persuasive. Accordingly, we will sustain the claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of November 1998.