

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13377

Docket No. 13255

99-2-97-2-21

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our agreement, in particular Rule 3, when they arbitrarily denied to compensate Michael Blair for the Thanksgiving holidays (November 23 and 24, 1995.
2. That, accordingly, the Springfield Terminal Railway company be ordered to compensate Carman Michael Blair in the amount of eight (8) hours pay for each day of the Thanksgiving holiday that he was unjustly denied.”

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.

At the time this dispute arose, Claimant was employed by the Carrier as a Carman. The Carrier had previously assessed Claimant discipline of a ten-day actual suspension, which started November 13, 1995 and included November 22, 1995, the day before Thanksgiving. The discipline was issued 47 days after the formal Investigation held on September 27, 1995. Accordingly, the first day Claimant would have been available for work following his suspension was November 23, 1995 (Thanksgiving Day). The Carrier denied Claimant compensation for the holidays of Thanksgiving and the Friday after Thanksgiving.

The Organization protested the denial of pay by a claim filed January 2, 1996, in which it alleged that Carrier had violated the provision of Rule 3 (b) of the Agreement between the Parties. Rule 3 (b) reads as follows:

“An employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday.”

Carrier declined the claim and it was subsequently progressed in the usual manner.

It is the position of the Organization that Claimant worked and was credited with compensation on his workdays immediately preceding and following the Thanksgiving holidays. Specifically, he worked the day before his suspension and the Monday after the Thanksgiving weekend, November 27, 1995. The Organization further claims that the Carrier intentionally delayed scheduling Claimant's discipline, so that it could avoid payment of holiday pay.

The Carrier maintains that according to Rule 3 (b), Claimant did not perform work for which he was compensated on the day before the Thanksgiving holiday and is, therefore, not entitled to holiday pay under that Rule. Moreover, the Carrier argues that Claimant would have worked per Rule 3 (b) except for discipline prompted by his own actions, not Carrier's.

The Board has previously held that Carrier has the right to schedule discipline in accord with its needs. (See, for example Public Law Board No. 5527, Award 10). The Organization has not shown that Carrier's delay in commencing Claimant's discipline

was an intentional ruse to avoid paying him holiday pay. Thus, we reject that portion of the Organization's argument. Further Awards cited by Carrier address the matter of unassigned claimants without sufficient compensated days to qualify for holiday pay. (Second Division Award 13073; Third Division Awards 31384; 31135). Those Awards are not on point with the instant dispute.

Carrier properly exercised its right to determine Claimant's days of suspension. It is unrefuted on this record that Claimant worked the day preceding his suspension, and the day immediately following his rest days of Saturday and Sunday following the Thanksgiving Holiday. Since he was on suspension at the direction of Carrier, assessment of his eligibility is in accordance with the standards set forth in Awards on this and other Boards. (See, for example Third Division Award 11308). On those days he was eligible to work, before and after the holiday at issue, Claimant worked. Accordingly, Claimant is entitled to holiday pay for the dates cited in 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 12th day of April 1999.