Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13612
Docket No. 13499
01-2-99-2-99

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"1. That the Union Pacific Railroad Company, violated Appendix 9, Section 3 of the Current Controlling Agreement between the Sheet Metal Workers' International Association and the Union Pacific Railroad Company, (hereinafter referred to as Carrier), subsequently revised and amended on January 1, 1993, when they refused to compensate Sheet Metal Worker G.L. Pearson, (hereinafter referred to as Claimant), for the Christmas Eve and Christmas Day Holidays, December 24, 1998 and December 25, 1998.

2. That the Carrier be ordered to compensate Claimant for the Christmas Eve and Christmas Holidays December 24, 1998 and December 25, 1998."

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.

On December 23, 1998, the Claimant arrived for work one hour and 29 minutes late. He subsequently advised his supervisor that he was ill. He clocked out and went home. He was paid for seven minutes. He was not paid for the Christmas Eve and Christmas Day holidays on December 24 and 25. At issue in this case is whether the Carrier's failure to pay the Claimant for the two holidays violated Appendix 9, Section 3, which provides:

> "A regular 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."

The Carrier questions whether the Claimant was legitimately ill on December 23, 1998. The Carrier further argues that the Claimant performed no service on December 23 and was merely trying to stretch a two day holiday into a three day holiday.

The Board's role is confined to interpreting and applying the controlling Agreement. We have no authority to add to, detract from, or otherwise amend the Agreement. We must apply the Agreement as it is written.

In the instant case the Agreement plainly and unambiguously provides that an employee qualifies for holiday pay "if compensation paid him by Carrier is credited to the workdays immediately preceding and following such holiday. . . ." There is no dispute that the Claimant was paid compensation for seven minutes credited to the day immediately preceding the Christmas Eve and Christmas Day holidays. There is no question concerning the Claimant's having worked the workday immediately after the holidays.

Our prior Awards agree that we must apply the language of this provision as it is written and that the provision does not specify a minimum amount of compensation or time worked that must be credited to the day before or the day after a holiday. See e.g., Second Division Awards 11719, 10683, 7410, 6474, and Awards cited therein. Indeed, it appears that at least one claim for holiday pay has been sustained where the Claimant was compensated for only five minutes on a day immediately preceding or following a holiday.

The lone exception appears to be Second Division Award 9307. As the Board did in Second Division Award 10683, we find Award 9307 factually distinguishable and not controlling. In Award 9307, the Claimant was denied holiday pay for Christmas Eve and Christmas Day. He received ten minutes of pay on December 23 and eight minutes of pay on December 26. He claimed that on December 23 his wife had called and told him that

their children were ill and that he was needed at home. However, it was undisputed that he had handed his time card to his foreman before he took the phone call from his wife. Consequently, the Board concluded that the record established that the Claimant was attempting to "sharp shoot" the Agreement and did not qualify for holiday pay. The Board characterized the facts presented as, "the most extreme situation that could develop under" the holiday pay Rule.

The instant case does not involve facts that are in any way comparable to those presented in Award 9307. There is no question raised concerning the Claimant's work on the day following the holiday. There also is no evidence comparable to the evidence that the claimant in Award 9307 had handed his time card to his foreman, indicating his intent to leave, even before the alleged reason for his departure materialized. Accordingly, we conclude that under the clear plain language of the Agreement, the Claimant qualified for holiday pay for December 24 and 25, 1998.[1]

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 4th day of June, 2001.

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[1]We are aware of Third Division Award 25947. To the extent that this award is inconsistent with clearly established Second Division precedent, we decline to follow it.