

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13655
Docket No. 13536
01-2-00-2-9**

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood Railway Carmen Division/
(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 current agreement, in particular Rule 14.2 when they arbitrarily refused to compensate Percy Goodblood for Presidents Day Holiday on February 15, 1999.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Percy Goodblood in the amount of eight (8) hours pay for Presidents Day 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 an investigative Hearing, the Claimant was found guilty of a charge in connection with his work performance. On February 11, 1999, the Claimant was assessed a three-day suspension. This disciplinary action is not before the Board here, and the Carrier's action was supported in Award 13633.

The Carrier directed the Claimant to take the three-day suspension on Tuesday, February 16 through Thursday, February 18, 1999. Presidents Day was observed as a paid holiday on Monday, February 15. The Claimant worked his scheduled day (Friday, February 12) before the holiday and also worked on the day following his suspension (February 19).

The Carrier determined that the Claimant was not entitled to holiday pay for February 15, because, according to the Carrier, he did not work nor was he "available" for work on the first workday following the holiday (which, as noted, was the first day of his disciplinary suspension).

Rule 14.2 reads in pertinent part as follows:

"To be eligible for holiday pay, employee must either work or be available for work on the last workday before and the first workday after the holiday."

The Board finds ample support for the Organization's view that the Claimant was improperly denied holiday pay, since the Claimant, contrary to the Carrier's contention, was "available" for work on February 16 and was prevented from working solely because of the Carrier's selection of the dates of the disciplinary suspension.

The holiday pay restriction in Rule 14.2, adopted in the same or varying form in many Agreements, has the obvious purpose of denying holiday pay to employees who fail to meet their immediately surrounding work schedules or, alternatively, make themselves "unavailable" for work on such days.

The Carrier asserts it's right to determine the timing of disciplinary suspensions, and this is not an issue here before the Board. It is also unnecessary for the Board to review the Organizations argument that the Carrier is deliberately timing suspensions in an attempt to avoid holiday pay benefits. The sole matter for determination is the meaning of "available." An employee prepared to meet a predetermined work schedule is clearly "available." Such employee does not become less "available" simply because the Carrier prevents the employee from working by electing to commence the employee's suspension

that day. (The dates for the disciplinary suspension bear no direct relationship to the offense for which the Claimant was found guilty.) Put another way, the first “workday” following the holiday on which the Claimant was permitted to work was February 19, a day which he did work.

Award 13377, involving the same parties and the same issue, supports this view. The provision similar to Rule 14.2 then in effect required for holiday pay eligibility “compensation . . . credited to the workdays immediately preceding and following such holiday.” The employee who was the subject of Award 13377 was on a disciplinary suspension for ten days immediately prior to Thanksgiving and worked on his scheduled workday immediately following the Thanksgiving holidays. Award 13377 succinctly concluded as follows:

“On those days he was eligible to work, before and after the holiday[s] at issue, Claimant worked. Accordingly, Claimant is entitled to holiday pay for the dates cited in the claim.”

Awards submitted by the Carrier are distinguishable from this claim. For example, Public Law Board No. 1438, Award 1, concerned an employee involved in an on-duty accident on the day preceding a holiday. This required the employee’s suspension pending a Hearing, a period which included a holiday. Three other Awards were issued more than 30 years ago and thus do not reflect more recent analysis of the meaning of “availability.”

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 11th day of December, 2001.