

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13783

Docket No. 13673

03-2-02-2-34

The Second Division consisted of the regular members and in addition Referee Don A. Hampton 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. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 14 when they arbitrarily denied the September 4, 2000 holiday (Labor Day) to Carman Kenneth S. Gardner.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Kenneth S. Gardner, in the amount of eight (8) hours pay, at the prevailing rate hourly rate. This is the amount he would have earned had the carrier properly complied with the agreement.”**

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 August 31, 2000 the Claimant "... called the Carrier and left a message that he would be off of work on September 1, 2000 due to his illness, requesting a compensated sick day." September 1, 2000 happened to be the Claimant's last scheduled work day prior to the Labor Day Holiday. The Claimant received sick pay for September 1, 2000 and holiday pay for Labor Day, September 4, 2000.

The Carrier subsequently determined that the Holiday pay was paid in error and eight hours pay was deducted from the Claimant's pay from the pay period that ended September 16, 2000 thus generating the claim before us.

The controlling language in the current Agreement is Rule 14.2 which reads:

"To be eligible for holiday pay, employees must either work or be available for work on the last workday before and the first workday after the holiday...The eligibility requirements of this paragraph may be waived for regularly assigned employees who request and receive permission to be off on any of the specified qualifying days or portions thereof. Permission will not be denied unless requested unreasonably or excessively."

The Rule clearly states that an employee must either work or be available for work on the last work day prior to and the first work day subsequent to the holiday; further that the Carrier may waive these requirements. In the case at hand, the Claimant called and left a message that he would not be in due to illness. There is no indication what so ever that the Carrier waived any of the provisions of Rule 14. The Claimant left a message that he would not be in and this is not the same as requesting from management permission to be absent. As the Carrier obviously did not waive the requirements of Rule 14 there has been no Rule violation. Such decision by the Carrier based on the facts of record in this claim do not seem unreasonable or arbitrary.

The Organization's contention that a similar claim settled on the property with another labor Organization established a precedent does not withstand scrutiny. First the settlement in question indicates that the settlement was without precedent and secondly the terms of the agreement in that case were markedly different than Rule 14 which is controlling in this claim. As there has been no Rule violation the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 24th day of October 2003.