

Award No. 11552
Docket No. MW-10828

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier improperly computed the compensation accruing to Section Foreman Dominic Morrell for services rendered during the month of February, 1957.

(2) Section Foreman Dominic Morrell be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

(3) The Carrier be required to discontinue counting holidays as workdays in computing and calculating pay of monthly rated employees.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. Dominic Morrell, was regularly assigned to the position of Section Foreman with headquarters at 67th Street, Chicago, Illinois. He is regularly assigned to a 40-hour work week, consisting of five days, eight hours each, Monday through Friday, excluding each of the seven holidays designated by agreement. His regularly designated rest days are Saturdays and Sundays and each of the seven holidays designated by the agreement, which includes Washington's Birthday.

The month of February, 1957 contained **one** (1) holiday, four (4) Saturdays, four (4) Sundays and nineteen (19) workdays for a total of twenty-eight (28) calendar days. The holiday (Washington's Birthday) fell on Friday, February 22, 1957.

During the month of February, 1957, the Claimant rendered service in the Carrier's behalf from February 1 through February 19, and again from February 26 through February 28. Because of personal illness, the Claimant rendered no service on three workdays, namely February 20, 21 and 25, 1957. Consequently, he performed service on eleven (11) full workdays in the first pay-roll period of February (1st to and including the 15th) and

contrary to any rules, regulations, or orders of the Commission with respect thereto. . . ."

If the Carrier were to comply with the Employees' contentions as to the proration of the monthly rates of pay, it would require inconsistency, if not falsification, in making payments for compensation and the reporting of service hours on the property at variance with the way they are reported to the Commission.

It can be readily seen from the instructions from the Interstate Commerce Commission that in reporting actual time worked and compensation, it is required that holidays, when they occur, shall be reported and counted; and it is mandatory to report the compensation for holiday allowance as time paid for and not worked.

Obviously, what the Employees contend is that whenever a section foreman is absent of his own volition during a month in which a holiday occurs, the proration should be on the basis of the number of actual work days in that month, disregarding the fact the increased monthly rate is primarily due to the inclusion and pay for each of the seven recognized holidays. Certainly, the increased rate and increased hours are synchronized to equal the added compensation and added hours emanating from Article II, Section 2(a), of the August 21, 1954, Agreement; otherwise the basic factor would have remained at 169 1/3 hours instead of being specifically changed to be 174 hours.

It is the position of the Carrier that Claimant Morrell was not able, ready, and willing to work the days in question, and that he has been properly paid for all service rendered during the month of February, 1957. Carrier requests the Board to deny Organization's claim that he should receive additional compensation for the month of February, 1957.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: This is a Holiday pay case. It is the claim of the Organization that the Carrier wrongfully computed the compensation due the Claimant in that they treated Washington's Birthday as a work day. This question has been before this Division on numerous occasions and with the exception of Award 10081 this Board has held that the Carrier was in error in its means of computation. See Awards 10681, 10682, 10816, 11041 and Second Division Award 2467. It is the judgment of this Referee that the latter awards are correct.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.