Award No. 15467

Docket No. CL-16020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

LOS ANGELES UNION PASSENGER TERMINAL
(Southern Pacific Company, Pacific Lines)
(The Atchison, Topeka and Santa Fe Railway Company)
(The Union Pacific Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5845) that:

(a) The Los Angeles Union Passenger Terminal violated the Rules of the Agreement between the parties when it refused to allow Mr. Ambrose E. Cheatum holiday compensation for Labor Day, September 3, 1962; and

(b) The Los Angeles Union Passenger Terminal shall now be required to pay Mr. Ambrose E. Cheatum an additional eight (8) hours' compensation for September 3, 1962, at the straight time rate applicable to position of Baggage and Mail Handler.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date March 1, 1953 (hereinafter referred to as the Agreement) between the Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute, Mr. Ambrose E. Cheatum (hereinafter referred to as the Claimant) was an unassigned employe, but had sufficient seniority to enable him to work on a regular basis prior and subsequent to date of claim. His work record for the 30-day period immediately preceding Labor Day Holiday, September 3, 1962, is as follows:

Saturday,	August	4	—	Day Off
Sunday,	August	5	—	Day Off
Monday,	August	6	—	Worked

Date 1962		Calendar Days Preceding 9-3-62	Status
Sat.	Aug. 25	9	No service performed/no compensation paid
Sun.	Aug. 26	8	No service performed/no compensation paid
Mon.	Aug. 27	7	Eight hours service rendered and paid for
Tues.	Aug. 28	6	Eight hours service rendered and paid for
Wed.	Aug. 29	5	Eight hours service rendered and paid for
Thur.	Aug. 30	4	Eight hours service rendered and paid for
Fri.	Aug. 31	3	Eight hours service rendered and paid for
Sat.	Sept. 1	2	No service performed/no compensation paid
Sun.	Sept. 2	1	No service performed/no compensation paid

The foregoing record of Claimant's service indicated that he had been compensated for service rendered on only ten of the thirty calendar days immediately preceding the holiday and, as a consequence, was not allowed 8 hours' pay at the pro rata rate (holiday pay) in addition to the compensation allowed for service performed that date.

7. On October 31, 1962, Petitioner's Division Chairman submitted claim on behalf of Claimant to the Terminal's Superintendent (Terminal's Exhibit A), for additional eight hours' compensation, September 3, 1962 (Labor Day), based on the contention that ". . . days of vacation count the same as days worked in computing the eleven (11) days that an unassigned employe is required to work in thirty (30) calendar days prior to the holiday."

By letter dated November 26, 1962 (Terminal's Exhibit B), Terminal's Superintendent denied the claim, and by letter dated December 4, 1962 (Terminal's Exhibit C), Petitioner's General Chairman gave notice that Terminal's decision could not be accepted and the claim would be appealed.

By letter dated January 19, 1963 (Terminal's Exhibit D), Petitioner's General Chairman appealed the claim to the highest officer designated to handle such disputes, and by letter dated February 13, 1964 (Terminal's Exhibit E), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The question before us here can be stated as follows:

> Shall vacation pay be considered as "compensation" within the meaning and intent of Section 3 of Article III, Holidays, of the August 19, 1960 Agreement?

Organization offers Awards 14674 and 14816, which would sustain Organization's position.

Carrier's argument is that the other than regularly assigned employe does not qualify for holiday pay unless "compensation for service . . . is credited to 11 or more of the 30 calendar days immediately preceding the holiday."

It is Carrier's contention that "compensation for service" means such compensation must be for service credited to those days. It argues that the 1960 Agreement indicated that "merely receiving compensation credited to the required days would not suffice, but that such compensation must be for service credited to those days."

Argument in Carrier's behalf is that Emergency Board No. 130, in its recommendations stated any new rules negotiated in consequence of that Board's recommendations

> ". . . should provide that an employe must be ready, willing, and able to work on the day before and the day following a holiday in order to qualify for holiday pay. Thus, employes scheduled to work who have quit, been discharged, are on sick leave, or are absent for any other reason, should not qualify."

Argument in behalf of Carrier interprets the above language to mean that the other than regularly assigned employe cannot qualify for holiday pay unless "compensation for service" paid him by the Carrier is credited. . . ."

Carrier also maintains that the intent of Emergency Board No. 130 in its recommendations

> ". . . could not possibly have been more clear in establishing an intention to use the word 'service' in its most common sense of actual work and in tying that service to the particular qualifying days, thereby excluding any day that an employe is absent for any other reason even though he might receive compensation for that day of absence. . . .
>
> A logical reading of this provision in the agreement connects the word 'service' as well as the word 'compensation' with the 11-day requirement."

As stated hereby the Carrier

> ". . . the precise issue is whether vacation pay allowed for a day of absence on vacation constitutes 'compensation for service' as that term is used in the controlling Holiday Pay Rule."

The applicable Agreement itself clearly provides the answer in Section 3, where it is clearly stipulated that:

> ". . . compensation paid under sick-leave rules will not be considered as compensation for purposes of this rule."

It is an accepted practice in interpreting rules of a collective agreement that where the parties, as here, clearly make an exception and only one exception (compensation paid under sick leave rules), no other exception may be inferred.

We must, therefore, follow Awards 14674 and 14816.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 7th day of April 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15467, DOCKET CL-16020 (Referee Lynch)

The holiday pay agreement with which we are here concerned is an amendment to a prior agreement, and was adopted in the context of recommendations and report of Presidential Emergency Board No. 130.

The original agreement created holiday pay for "regularly assigned" employes only. In order to qualify, a regularly assigned employe had to have "compensation" paid by Carrier credited to the work days immediately preceding and following a holiday. The generic term "compensation" was used without modifiers and was limited only by a single express exception reading:

> "Compensation paid under sick leave rules or practices will not be considered as compensation for purposes of this rule."

The lone term "compensation", used without modifiers, was carried forward into the paragraph of the new agreement that defines the rights of "regularly assigned" employes, and this same identical exception to the meaning of that term was also carried forward.

The new agreement creates holiday rights for "other than regularly assigned" employes, but in doing so it utilizes new terminology. The lone term "compensation" is not used. Rather, the composite term "compensation for service" is adopted and "other than regularly assigned" employes are accorded certain rights in the event they receive "compensation for service" on specified dates.

In the light of these facts, it is contrary to elementary rules for the construction of contracts to conclude that the exception relating to the lone word "compensation" is intended by the parties to have the effect of stripping the new term "compensation for service" down so that it has only the same meaning as "compensation" standing alone.

Two elementary rules of construction are violated by such a conclusion. In the first place, a provision that is carried forward into a new agreement is given the same meaning that it had in the preceding agreement unless a contrary intention is clearly manifested. Under the original agreement, the express exception with reference to sick pay referred solely to the word "compensation" as that lone word was used in reference to "regularly assigned" employes. This being the case, such exception in the subsequent agreement cannot be expanded to have reference to the phrase "compensation **for service**" relating to employes who are **not** "regularly assigned" in the absence of some specific provision to that effect in the agreement. There is nothing in the agreement implying that the sick pay exception is to have any broader or different meaning than that applied to it in the original agreement; all of the implications are that it should have the same limited application. Hence, it cannot properly be given any broader or different meaning and effect.

Another universally accepted rule of construction which the Award violates is the rule requiring that all provisions of an agreement be given some definite effect where that is reasonably possible. It is presumed that the parties intended that some definite meaning be attached to each of the provisions added to their agreement. Common sense dictates such a rule. It would be utterly senseless for parties drafting an agreement to insert words and phrases to which they did not intend to attach some meaning and effect. This Award strips all meaning and effect from the words "for service" which the parties painstakingly negotiated into the new agreement to limit rights of other than "regularly assigned" employes.

When this Board both ignores the circumstances in which the agreement was written and fails to give effect to clear provisions written into the agreement itself, it exceeds its jurisdiction and enters the field of rule making.

We dissent.

G. L. Naylor
R. E. Black
T. F. Strunck
P. C. Carter
G. C. White

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