



Award No. 16596
Docket No. CL-17393

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE UNITED STEELWORKERS OF AMERICA

THE UNION RAILROAD COMPANY

STATEMENT OF CLAIM: The claim in this case is based upon the failure of the Union Railroad Company to compensate Mr. M. P. Danscak for holiday pay on July 4, 1966. The claim as filed with the Carrier is listed as follows:

"Please allow 8 hours at straight time rate as Yard Clerk for the holiday July 4, 1966. I was swiped as a yardmaster on above date and should have been allowed 8 hours for the holiday, because I worked as a yard clerk on July 1, 1966 and had time in the pay period as a clerk.

/s/ Michal P. Danscak
Yard Clerk & Yardmaster"

EMPLOYES' STATEMENT OF FACTS: Rule 6, Section B, subsection 2 and 3 of the agreement between the Union Railroad Company and the United Steelworkers of America, Local Union 3263, reads complete as follows:

"RULE 6. HOLIDAYS

B. Hourly rated employees:

2. Pay for Holidays Not Worked.

Effective as of the date of this Agreement, an eligible employee who does not work on a holiday listed above shall be paid eight times his straight time hourly rate during the payroll period in which the holiday occurs, provided, however, that if an eligible employee who is scheduled to work on any such holiday fails to report or perform his scheduled or assigned work, he shall become ineligible to pay for the unworked holiday unless he has failed to report or perform such work because of sickness or because of death in the immediate family (mother, father, including in-laws, children, brother, sister, husband, wife and grandparents) or because of similar good cause. (Revised September 8, 1960.)"

The grievance was progressed to the Superintendent's office and declined in a letter dated September 6, 1966. A copy of this letter is attached as Carrier's Exhibit D.

In a letter dated December 9, 1966, the Superintendent's office again declined the grievance. A copy of this letter is attached as Carrier's Exhibit E.

The employees progressed the grievance to the Assistant to Vice President and General Manager's Office and it was declined in a letter dated February 13, 1967. A copy of that letter is attached as Carrier's Exhibit F.

As the Carrier understands the organization's position, they are contending that Mr. Danscak is entitled to holiday pay (8 hours at the straight time rate) as a yard clerk for July 4, 1966 because he worked as a yard clerk on July 1, 1966. The employees are in effect asking that Danscak receive the benefits under both the yardmaster and yard clerks' agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant in this case is an employe, who over a prolonged period of time held dual seniority as a yard clerk as well as a yardmaster. Yard clerks are represented by the United Steelworkers of America, Local 3263 and the yardmasters are represented by the Brotherhood of Railroad Trainmen. When he performed work as a yard clerk, he was subject to the provisions of the Clerks' Agreement, and when he performed work as a yardmaster, he was subject to the provisions of the Yardmasters' Agreement.

On June 28, 1966, the Carrier posted a bulletin advertising for a regular yardmaster assignment. The bids for this assignment closed at 12 Midnight on July 1, 1966. On July 3, 1966, Claimant was notified that he was the successful bidder and effective July 4, 1966, he became a yardmaster.

A review of Claimant's work chart shows that he worked his regular yard clerk's assignment on July 1, 1966 and July 2nd and 3rd were his regular relief days. However, since he was at this point in time, July 2nd an extra yardmaster, he worked in that capacity on that day.

July 3rd and 4th were the regular relief days for his newly acquired regular relief yardmaster assignment. He worked this assignment on July 5, 6, 7, 8 and 9. Despite the fact that the yardmaster assignment became effective on July 4th, a claim has been submitted for holiday pay under the provisions of the Clerks' Agreement.

Whereas in the past, Claimant worked intermittently as a yard clerk, and extra yardmaster holding dual seniority and thus entitled to all privileges and emoluments of both contracts, when he bid for this permanent position of Yardmaster and was awarded that assignment effective July 4th, he thus effectively removed himself from the provisions of the Clerks' Agreement. Consequently, we will deny the claim.

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 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.