

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20309
Docket Number MW-20230

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(J. F. Nash and R. C. Haldeman, Trustees of the
(Property of Lehigh Valley Railroad Company,
(Debtor

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

(1) The Carrier violated the Agreement when it refused to allow Holiday Pay for July 5, 1971 to Truck Driver Thomas J. Sweeney and, as a consequence thereof

(2) Truck Driver Thomas J. Sweeney be allowed eight hours of pay at his straight-time rate.

OPINION OF BOARD: Claimant, an hourly rated regularly assigned truck driver at Hazleton, Pa., rest days Saturday and Sunday, claims 8 hours' holiday pay for July 5, 1971, the day proclaimed to be observed as the Independence Day holiday. Claimant was on vacation June 16, 17, 18, 21, 22, 23, 24, 25, and 28, 1971. He was off duty and did not work Tuesday, June 29; Wednesday, June 30; nor Thursday, July 1. He was granted a day's vacation, under compensation, on Friday, July 2; and Saturday, July 3, and Sunday, July 4 were claimant's rest days. Claimant worked on Tuesday, July 6, 1971, for which he received compensation. Claimant received no compensation for Thursday, July 1, when he was off duty and not on vacation.

Claim is based on Section 3 of Article II of the National Agreement dated August 21, 1954 as amended by Article III Section 2 of the National Agreement dated May 17, 1968, which reads:

"Section 2. Section 3 of Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, is hereby amended to read as follows:

Section 3. A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek,

"the first workday following his rest days shall be considered the workday **immediately** following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday **immediately** preceding the holiday."

The Carrier, by letter of **Mr.** M. W. Midgley, **Director** of Labor Relations and Personnel, dated March 29, 1972 (Carrier's Exhibit "**K**"), takes the position that:

"Claimant did not meet the requirements of Section 3 of the National Holiday Agreement quoted above. The workday **immediately** preceding the holiday in this claim was Thursday, July 1st. Saturday and Sunday, July 3rd and **4th**, were claimants **rest** days, and Friday, July 2nd was a vacation day and not a workday. Since claimant received **no** compensation for service performed nor was he available for service on Thursday, July **1st**, he failed to meet the requirements of Section 3 of the National Holiday Agreement, and, therefore, is not entitled to holiday compensation."

The Carrier further argues in its Submission that "Section 7 of Article II of the Brotherhood of Maintenance of Way Employees' National Holiday Agreement, as amended, specifically provides that

"The 'workdays' and 'days' **immediately** preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes."

"The fact **claimant's** 'vacation period' consisted of one, five, ten, fifteen, or twenty days would have no changing affect on that provision. Mr. Sweeney's 'vacation period' was **Friday**, July 2, 1971; therefore, Thursday, **July 1** became the 'workday' and 'day' **immediately** preceding the vacation period. Mr. Sweeney, by his own action, failed to qualify for holiday pay."

The Organization argues that: "Section 7 is applicable in instances wherein a holiday falls inuring an **employee's** vacation period. such instances, the vacationing **employee** is entitled to pay for the holiday (in addition to vacation pay) providing he receives compensation credited to the workdays immediately preceding and following the vacation period. In this case, the holiday did not fall during claimant's one day **vacation** period. **The** claimant was on vacation for only one day (Friday, July 2, 1971). The holiday was observed on Monday, July 5, 1971 and fell outside of the vacation period." Awards 7852, 7853, 7854, and L0553 are cited by the Organization in its Submission.

We must agree with the Organization that Section 7 is inapplicable because the holiday did not occur during the vacation but occurred after the vacation period was already concluded. See Award 10553 (Daly).

The Organization further contends as follows:

"Section 3 of Article 11 of the National Vacation Agreement as amended (quoted herein...) stipulates that when, as here, a holiday falls on the first workday of an **employee's** workweek, the last workday of the preceding workweek shall be considered the workday **immediately** preceding the holiday. As may be noted from the Carrier's letter dated March 29, 1972, quoted **hereinbefore**, it is undisputed that the claimant received vacation pay credited to Friday, July 1, 1971. the workday immediately preceding the holiday and that he worked and received compensation credited to Tuesday, July 6. the workday immediately following the holiday. Thus, there can be no question but that the claimant qualified for holiday pay for Monday, July 5, 1971. This is **especially** so in view of the **many** awards wherein this Division has held that 'vacation pay' is credited **compensation** for holiday pay purposes."

Awards 14501, 14674, 14816, 15467, and 16089 are cited by the Organization for the proposition that vacation pay is credited compensation for holiday pay purposes.

This Board has recited in some detail the facts in this case and the contentions of the parties inasmuch as the language of a **national** agreement is here in dispute. National agreement provisions are normally intended to be construed uniformly and consistently, thereby achieving predictability and **harmony** in accomplishing the purposes of the agreement. Accordingly, a judicious application of the principle of precedent serves to maintain the integrity of the agreement, and **it** is incumbent upon us to give due weight to prior awards pertinent to the facts and contentions of the parties in this dispute. We have carefully considered the **awards** cited by the Organization (Awards 7852, 7853, 7854, 10553, 14501, 14674, **14816**, 15467, **16089** of this Division, and Award 2591 (Second Division) and conclude that these awards are determinative.

Section 3 of Article II of the National Agreement dated August 21, 1954, as amended by Article III Section 2 of the National **Agreement** dated May 17, 1968, has been interpreted by this Board to mean that compensation for vacation constitutes credited compensation applicable "to the workdays immediately preceding and following" such holiday. Thus, we held in Award 14501 (**Dorsey**):

"The August 21, 1954, Agreement, as amended effective July 1, 1960, provides, insofar as is here pertinent, that a regularly assigned **employee** shall qualify for holiday Pay if compensation paid him by the Carrier is credited to the workdays **immediately** preceding and following such holiday. That Agreement also provides that compensation paid under sick Leave rules or practices will not be considered as compensation for the purposes of the rule. No such exception is made as to vacation compensation."

In Award 16089 (Woody), we held:

"Carrier has questioned Claimants' right to **include** vacation payments in calculating 'compensation or service paid by the Carrier.' This right was established by our decisions in Awards 14501, 14674, and 14816."

The precedents of the Board construing and applying the national agreement provisions here in dispute show consistency, uniformity, and clarity, and are based on sound reasoning as to the meaning and **intentment** of the Language. The awards are without palpable error and are controlling in the case before us.

As Claimant received vacation pay credited to Friday, July 1, 1971, the workday immediately preceding the Independence Day holiday, and as he worked and received compensation credited to Tuesday, **July 6**, 1971, the workday **immediately** following the holiday, he qualified for the eight hours holiday pay at straight-time rate, and the claim **will** be sustained.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

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

ATTEST: *E. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.