

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21796
Docket Number CL-21609

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(
(Portland Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-8171, that:

1. Carrier violated the provisions of Rule 44 of the Schedule Agreement when it failed to compensate Mr. R. H. **Schaaf**, **PICL** Clerk Position **#461**, Portland, Oregon, for holiday pay, Thanksgiving Day, **November** 28, 1974.

2. Carrier shall now compensate Mr. Schaaf holiday pay for November 28, 1974.

OPINION OF BOARD: Claimant herein, a protected employe under the February 7, 1965 Stabilization Agreement, had a seniority date of March 10, 1942. Claimant was displaced by a senior employe on November 4, 1974 and **immediately** went on vacation. Upon returning, **Claimant** displaced a junior employe on Position C461 on November 18, 1974. He began to qualify on the new position on November 23rd; during the period beginning November 23 and ending December 16, **1974, Claimant** received protective compensation. Carrier characterizes his status during that latter period as a "trainee" or "student." Claimant was denied holiday pay for the Thanksgiving holiday, which was **on** the first rest day of his new position.

Carrier, on the property and initially in its submission to this Board, argued that this Board had no jurisdiction over this dispute, since the February 7, 1965 Agreement was involved. **In addition, Carrier** contended that no holiday pay was due Claimant since, **not** having qualified, he was not yet "regularly assigned" to the new position. **It is noted, however, that Carrier did ultimately concede that Claimant "is entitled to holiday pay as an "other than regularly assigned" employe' even though the claim was not filed or progressed on this basis."**

The record indicates that on the property Petitioner asserted that Claimant was entitled to holiday pay, having met the qualifications, regardless of whether he was a "regularly assigned employe" or an "other than regularly assigned **employe.**"

Carrier's argument with respect to jurisdiction must be rejected since this dispute is concerned solely with the schedule rules and the national holiday agreements; the fact that Claimant was a protected **employee** does not per se determine the jurisdiction to be asserted.

Based on the clear language of both Rule 44 of the schedule agreement as well as the national holiday **agreements, we can** see no reason to deprive Claimant of holiday pay for the day in question. The **claim** must 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;

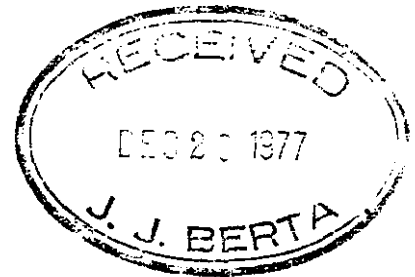
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of **November** 1977.