

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21848**

Docket Number CL-21842

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(The Atchison, Topeka and Santa Fe
(**Railway** Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
GL-8253, that:

(a) Carrier violated the provisions of the current Clerks' Agreement when it failed and/or refused to properly compensate Mr. **D. W. Jeffers** for holiday pay on Record File Clerk Position No. 6128 on March 28, 1975, **and**

(b) Mr. D. W. Jeffers shall now be paid eight (8) hours' pay at the pro rata rate of Record File Clerk **Position** No. 6128, Centralized Accounting Bureau, Amarillo, Texas for March 28, 1975.

(c) In **addition** to the **money** amounts claimed above, Carrier shall pay an additional **amount of ten per cent** interest per **annum** compounded annually on the anniversary date of claim.

OPINION OF BOARD: Undisputed facts are: (1) Claimant Jeffers is a regularly assigned Record File Clerk. **(2)** on March 23, 24, 25, 26, 27, 30, 31, 1975 he performed Train Dispatcher duties, protecting various Dispatcher positions. (3) He did not work on March 28 or March 29. (4) March 28 was a holiday recognized by the Clerks' Agreement, but not recognized, as such, by the Dispatchers' Agreement.

Petitioner contends Claimant was entitled to holiday pay on March 28 under Section 3 of Appendix No. 5 to the Clerks' Agreement. The Carrier contends Claimant does not meet the conditions specified in Section 3, and further contends that Claimant was covered by the Dispatchers' Agreement and not the Clerks' Agreement on the March 28th holiday.

Since Claimant was a regularly assigned **Clerk**, the Carrier has the burden of showing that he was not occupying that position on March 28 if its position that the Dispatcher Agreement controls is to be sustained.

This Board concludes that such burden has not been met. Claimant's assignment to Dispatcher duties on the day before the holiday was for one day only, March 27. **He** was notified of his next Dispatcher assignment on March 29, which he worked on March 30. At the completion of work on March 27 he did not know he would return to Dispatcher duties after the holiday, which distinguishes these facts from those in Public **Law** Board 132, Award No. 31, where the **employee** was given a two weeks' assignment to protect a single vacancy and the temporary assignment clearly included the holiday.

The fact that Claimant in the present case would be entitled to have March 28 and 29 as rest days under the Dispatcher Agreement, as Carrier has established, does not **necessarily mean** that he was in that status on those days. In the absence of **clear** proof in support of Carrier's position, this Board finds that Petitioner's position regarding Claimant's March 28th status--that of a Clerk on holiday status--should be accepted.

As a regularly assigned Clerk under Section 3, App. No. 5, Claimant was entitled to holiday pay on March 28 if he **received compensation** for the workdays immediately preceding and following the holiday. He unquestionably received pay for the day before the holiday, March 27. Since the holiday fell on the last day of his regularly assigned workweek, the first day following his rest days (March 31) is considered to be the workday immediately following the holiday, according to Section 3. The fact that he was paid as a Dispatcher the days before and after the holiday, and not as a clerk, is immaterial as no such limitation appears in the language of Section 3, which the Board has found applicable.

The Carrier has argued that awarding Claimant holiday pay under the Clerks' **Agreement** would result in double pay for March 28 because the Dispatchers' pay rate includes holiday pay in lieu of recognizing specific holidays. While such a result would be undesirable, the sole issue before this Board is whether a violation of the Clerks' Agreement occurred. We do not rule upon the question of whether Claimant's receipt of Dispatcher pay before and after March 28 constituted payment for March 28 under the Dispatcher's Agreement.

The Board recognizes the importance of stabilizing contract administration by following prior rulings. Cases cited by the Carrier however, do not resolve the issue here in dispute. For example, Award No. 274, Public Law Board 298, containing language seemingly on point, involves a claim for holiday pay under the Telegrapher agreement when the **employee** actually performed Dispatcher work on the holiday. Similar

distinguishing facts are present in the other cases called to the Board's attention by the Carrier.

The Board concludes that the claim for pay for March 28, 1975 should be allowed, but the record does not support a finding that interest be allowed.

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.

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Claim sustained to extent indicated in above opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.