

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22086
Docket Number CL-21866

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(**Steamship** Clerks, Freight **Handlers**,
(Express and Station **Employees**
(Consolidated Rail Corporation
(**(Former** Central Railroad **Company** of New Jersey)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8236) that:

1. Carrier violated Article 26 - Holiday Pay - of the TC Agreement when it failed to compensate regular assigned **Towerman** **W. R. Stefanski** Holiday Pay for July 4, 1975, and that

2. Claimant W. R. Stefanski be compensated for holiday pay at 8 hours pro-rata rate of his position at Bank Tower.

OPINION OF BOARD: Claimant regularly worked as a **Towerman**, an hourly-rated position, under an Agreement entitling him to eight hours pay for each holiday for which he is eligible.

in the period in question, he worked a Monday-Friday schedule, with Saturdays and Sundays as rest days. He worked as Toweman on Monday through Wednesday, June 30 - July 2; then accepted assignment as Train Dispatcher on Thursday through Monday, July 3 - 7 (including work on July 4, a holiday) and returned to his **Towerman** position on July 8.

Applicable portions of the Agreement are as follows:

"Article 26 - Holiday Pay

(a) Subject to the qualifying requirements applicable to regularly assigned **Employees** contained in paragraph (b) hereof, each regularly assigned hourly and daily-rated **Employee** shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual **Employee**: . . .

"(b) A regularly assigned **Employee** shall qualify for the holiday pay provided in paragraph (a) hereof if **compensation** paid him by the Carrier is credited to the workdays **immediately** preceding and following each **holiday** or if the **Employee** is not assigned to work but is available for **service** on such days. . . ."

There is no dispute that **Claimant** was properly relieved of his **Towerman** position to accept assignment for July 3 - 7 as Train Dispatcher, a monthly-rated position under a different Agreement. The Carrier is nevertheless the **employer** in both instances.

Previous awards have settled the question that, as long as the Carrier is the employer, the type of work performed by the **employee** does not **affect** his eligibility for holiday pay. Award No. 20725 (**Lieberman**) states in part:

"The same issue has been before this Board on a **number** of occasions. In Awards **11317**, **16457** and **18261** telegraphers who also worked as **extra** dispatchers were involved, just as in the instant case. In Award **18261** we said:

'The effect of these decisions is that the rule makes no qualifications with respect to the source of the compensation paid by the Carrier and credited to the **employees'** regular work days **immediately** preceding and following the holiday. And since **only** one exception - that with respect to sick leave payments - is expressed, no other or further exceptions **may** be implied. Such decisions **cannot** be characterized as palpably erroneous; therefore they provide valid precedent.'

In this dispute, we **shall** reaffirm the principle that any compensation received by **employees**, regardless of source (except sick leave payments), is sufficient to **qualify** for holiday pay under the **compensation** test of the Agreement cited supra. For this reason, the **Claim must** be sustained."

Thus the sole issue **remaining** is the Carrier's contention that the **Claimant** is ineligible **for** holiday pay under the **Agreement** covering **Towermen**, since his pay as Train Dispatcher is on a monthly **basis** designed to **include** holiday Day. Such position finds **some** support in Award No. 19632 (Brent), although in that case the facts show that the **temporary assignment** to a monthly-rated position was for a **more** extended period.

The Board finds **that** the theory of **monthly** pay inclusive of an additional **amount** for holidays (as contrasted with payment of eight hours' pay for holidays as under agreements **for** hourly-rated **employees**) does not apply, when subject to **full** analysis. First, as pointed out by the **Organization**, **employees temporarily assigned to monthly-rated positions** do not receive a monthly rate; but rather such position is, according to formula, converted back to **an hourly** rate for purposes of paying the **temporarily** assigned employee. Second, the analogy is incomplete. **Assume**, for example, the existence of eight paid holidays **per year**. This **means** that pay for a single holiday, if included in the **monthly** rate, requires the earning of a **month** and a **half** pay. (**Assume** **12** paid holidays, **and** it takes a **full month** to earn pay for a single holiday.) Thus, the employee who is placed on a **monthly** rated job for five days -- regardless of what divisor is used to arrive at an equivalent rate -- **comes** nowhere near **approximating** holiday pay under the **monthly-rated agreement**. He is getting little **or** no "bonus." And, as an **employee** continuously **employed** by the Carrier before and after the holiday at issue, there is no agreement rule or logical theory to deny his holiday Day.

The **Board** thus carries forward one step the conclusions reached in Award No. 21848 (Mead), in which the employee was found to be eligible for holiday pay under his regular assignment. **We** now state that brief service on a monthly-rated position on and/or **immediately** surrounding a holiday does not, for the reasons advanced above, constitute double **or** "bonus" payment under two agreements. This finding is not intended to affect previous awards which can be distinguished because the **employee** has **completed his assignment** to a position prior to a holiday or, alternately, is **assigned** to another position for an **extended period** of **time** surrounding the holiday.

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 31st day of May 1978.

