

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award **Number** 22634
Docket Number CL-22445

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE:

(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8534) that:

(a) The Carrier violated the Clerical Agreement when they did not properly pay R. R. Powers during the month of December, 1974.

(b) The Carrier should now recompute R. **H.** Powers' pay for December, 1974 and allow him \$58.70 in addition to any other pay due him for this period.

OPINION OF BOARD: The **Claimant** requested ten **(10)** vacation days in December of 1974. Carrier granted those days and also included December 25 as one of the vacation-days.

In support of his claim, the **Employee** cites Sections 3 and 4 of a September 1, 1949 Agreement:

"3 - The monthly rate of an **employee** will be compensation for eight hours or less per day (as assigned by bulletin) for the number of working days in a month. A month shall be the number of days therein less rest days and the holidays specified in Rule 39(b) or the days to be observed as holidays in lieu of holidays.

4 - Regularly assigned **employees** hereunder will receive for each semi-monthly pay period the fractional part of the working days **in** the particular calendar month. For example, in a calendar month containing 21 working days an **employee** would receive **10/21** of the monthly rate for the pay period having ten working days, and **11/21** of the monthly rate for the pay period having eleven working days."

Because December, 1974 had 21 working days (exclusive of rest days and holidays), the Claimant urges that he was entitled to **1/21st** of his monthly rate per work and vacation days - i.e., \$58.699 per day, and the same pay for **Christmas** Day.

Carrier submits **that** proper compensation was made and that no adjustment is due.

We do not concur with Carrier that the original claim was "changed and expanded." It was essentially the **same** and the Organization complied with the intent of the rule. Thus, we will consider the case on its merits. In essence, Carrier defends its **position** on the proposition that the **Claimant** holds a **monthly** rated position and payment for holidays is incorporated in the monthly rate and he received the precise amount due if he had worked the entire **month** (and not taken vacation). Thus, Carrier asserts that Claimant has failed to show any rule violation.

We have reviewed this rather extensive record at length, and we **have** considered the various contentions and assertions regarding history of the problem, practice, etc., and we have reviewed the cited Awards.

It **may** very well be - and we make no ruling thereon - that **on some** other property, this Claimant's compensation for the claim period would have been computed precisely and correctly if done as was the case here. But here, we continue to return to that portion of the parties' unique rule which appears to us to create a formula basis for payment and there may very well be a monthly fluctuation.

Again, we emphasize that this Award speaks only to this claim concerning the rule before **us** in this dispute.

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;

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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:

G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this **9th** day of November **1979**.