

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22946
Docket Number CL-22632

Richard R. Rasher, Referee

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

PARTIES TO DISPUTE: (

(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8608)
that:

1. The Carrier violated the Agreement(s) when it failed and refused to allow Clerk-Operator R. L. Hughes, Rockport, Florida, eight (8) hours straight time, holiday pay, February 21, 1977.

2. Account this violation, Carrier shall compensate Claimant \$52.18, which is the Rockport, Florida, Clerk-Operator's straight time daily rate. This payment is in addition to the eight (8) hours, time and one-half payment that has been allowed **Claimant** for **time** actually worked on this holiday.

OPINION OF BOARD: Claimant, R. L. **Hughes**, is a regularly assigned **Clerk-Operator** on the third trick at Rockport, Florida.

He also works, when needed, as an extra Train-Dispatcher on the Tampa Division. On February 20, 1977 Claimant worked as a Train-Dispatcher at Mulberry, Florida. On February 21, 1977, a holiday, he worked his regular Clerk-Operator assignment at Rockport. On Saturday, February 22, 1977 he again worked as a Dispatcher. Mr. Hughes filed a time card claiming eight hours' holiday pay plus eight hours at the overtime rate for work performed on the holiday. The Carrier denied the claim because Mr. Hughes did not perform clerical work on the qualifying days for a holiday, as stipulated in the Clerks' Agreement, Rule **26-Holidays**.

The Organization argued that the Carrier violated Rule 43-2(a)-Promoted to Excepted, Subordinate Official or Official Positions and Training Employees for Promotion to Position of Train Dispatcher, and Rule 26, Section 1(d)-Holidays, which read as follows:

"RULE 43 - Promoted to Excepted, Subordinate Official or
Official Positions and Training Employees for
Promotion to Position of Train Dispatcher

"2 (a) Employees who are under temporary promotion to the positions of **Yardmaster** and Train Dispatcher will not be permitted to return to their assignments after having worked five (5) consecutive days as Yardmaster or Train Dispatcher, if it is definitely known **that** there is work in sight as **Yardmaster** or Dispatcher on the eighth (8th) day. However, it will be permissible to return to their assignments on the **sixth** (6th) day, if it is not known **that** their services will be needed as **Yardmaster** of Train Dispatcher on the eighth (8th) day."

"**RULE 26 - Holidays**

Section 1, reading in part as follows:

"(d) 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 work days **immediately** preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. . . ."

The claim **must** be denied. Clerks and Dispatchers work under separate Agreements. Rule 26 of the Clerks' Agreement had its origin in the National Agreement of August 21, 1954 **and** Dispatchers were not covered by that Agreement. The A.T.D.A. has negotiated its **own** method of compensation for holidays - payment is incorporated into their monthly rate and is spread over the entire year, rather than receiving it on the day that the holiday occurs, as is the situation for Clerks **under Rule 26**.

Claimant cannot be compensated under two agreements. Claimant has acquired status under two agreements, but his status under the Dispatchers' Agreement cannot be given any effect upon his status under the Clerks' Agreement because he worked the days **immediately** preceding and succeeding the holiday as a dispatcher.

Even if we were to consider, as relevant **in** the **claim** before us, arguments regarding preponderance of service, in the instant case Claimant worked preponderantly in the months prior to the claim date as a dispatcher. He cannot show preponderant service under the clerical agreement and thus sustain the argument that he is entitled to holiday pay **under that** agreement.

Finally, similar claims on this property (Award Nos. 44 and 56 of Public Law Board No. 1366) have denied claims of a similar nature.

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 not violated.

A W A R D

Claim denied.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.

LABOR MEMBER'S DISSENT
TO
AWARD 22946, DOCKET CL-22632
(Referee Rasher)

Award 22946 is in error. The majority has ignored a long line of decisions that have held that compensation received as a Train Dispatcher on the day before **and** the day after a holiday qualify a telegrapher temporarily working as a train dispatcher for **holiday** pay under the Clerks' Holiday Agreement. See Awards 11317 (**Moore**), **11551** (Webster), 11977 (**Kane**), 14501 (Dorsey), 15685 (Dorsey), 16457 (**Mesigh**), 16596 (McGovern), **18261** (Dolnick), 18953 (Rubenstein), 20585 (**Lieberman**), 20725 (Lieberman), 22086 (**Marx**), 22198 (Marx) and 21848 (**Mead**), of this Division. A number of Special and Public Law Boards have **also concluded** that the **Holiday** Pay Agreement was carefully drawn so as not to **disqualify** an employe for holiday pay because the compensation earned in the qualifying period resulted from service **accruing** from the application of dual seniority. See **SBA** 122, Award 37 (Gilden), **SBA** 192, Award 82 (Robertson), **PLB** 274, Award 298 (Ritter), **PLB** **352**, Award 9 (Weston), **PLB** 713, Award 34 (Dolnick) and **PLB** 713, Award 38 (Dolnick).

The majority erred and dissent is required.



J. C. Fletcher, Labor Member