

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **23172**  
Docket **Number** cl-22205

Robert A. **Franden**, Referee

(Brotherhood of Railway, Airline **and**  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employees**  
PAKCIES TO DISPUTE: (  
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(**GL-8463**) that:

1. Carrier violated the Schedule Agreement when it failed to properly compensate Telegrapher R. V. Stewart, Seattle, Washington, holiday pay for December 24 and 25, 1976, and January 1, 1977.

2. Carrier shall **now** be required to compensate R. V. Stewart eight (8) hours pro rata pay for December 24 and 25, 1976, and **January** 1, 1977, at the rate of his regular Telegrapher **assignment** at South Portal, Seattle, Washington.

OPINION OF BOARD: Claimant is regularly assigned to **the third** shift Telegrapher position at **South** Portal, Seattle, Washington. Claimant also performs work as an **Extra** Train Dispatcher. **Commencing** on December 12, 1976 and continuing through January 5, 1977 claimant performed work as a train dispatcher and was compensated under the Dispatchers' Agreement during that time.

At issue in this case is whether claimant is entitled to apply the Holiday pay provisions of the Telegraphers' Agreement while working as a Train Dispatcher. Holiday pay for Train Dispatchers is included **in** their regular monthly pay. Payment for Holidays for Telegraphers is covered by Appendix G to the Clerks' Agreement which **in** pertinent part reads as follows:

"Section 1. Subject to the qualifying requirement contained **in** Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays: (\*)

New Year's Day  
Washington's Birthday  
Good Friday  
Memorial Day  
Fourth of July

Labor Day  
Veterans Day  
Thanksgiving Day  
**Christmas** Eve (the day before  
Christmas is observed)  
**Christmas**

"(\*) **NOTE.** In the Dominion of Canada the following holidays will be observed in lieu of the **employee's** birthday **and** those specified above: New Year's Day, Good Friday, Empire Day, Dominion Day, **Labour** Day, Thanksgiving Day, Remembrance Day, **Christmas** Eve, Christmas Day and Boxing Day.

(a) Holiday pay for regularly assigned employees shall be at the pro rata rate of **the** position to which assigned.

(b) For other than regularly assigned employees, if the holiday falls on a day on which he would otherwise be assigned to work, he shall, if consistent with the requirements of the service, be given the day off and receive eight hours' pay at the pro rata rate of the position which he otherwise would have worked. If the holiday falls on a day other than a day on which he otherwise would have worked, he shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to **him** prior to the holiday.

(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph (b) above, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days **immediately** preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment.

(d) The provisions of this Section and Section 3 hereof applicable to other than regularly assigned employees are not intended to abrogate or supersede more favorable rules and practices existing on certain carriers under which other than regularly assigned employees are being granted paid holidays.

NOTE: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above enumerated holidays."

"Section 3. 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 workdays **immediately** preceding and following such holiday or if the employee is not assigned to work but is **available** for service on such days. If the holiday falls **on** the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his **workweek**, the last workday of the preceding **workweek shall** be considered the workday **immediately** preceding the holiday.

Except as provided **in** the following paragraph, all others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the day preceding **and** the day following the holiday they satisfy one or the other of the following **conditions**:

- (i) Compensation for **service** paid by the carrier is credited; or
- (ii) Such employee is available for service.

NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to **mean** that an employee is available unless he lays off of his **own** accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

For the purposes of Section 1, other than regularly assigned employees who are relieving regularly assigned employees **on** the same assignment on both the work day preceding and the work day following the holiday will have the workweek of the **incumbent** of the assigned position and will be subject to the **same** qualifying **requirements** respecting service and availability on the work days preceding and following the holiday as apply to the employee whom he is relieving.

Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

We have been furnished with **conflicting** authorities **on** this point **in** support of the positions of both sides. While we are able to distinguish those awards which hold that service in another craft qualifies as work **immediately preceding** or following a holiday, we are faced with awards such

as 22086 which states that brief service on a monthly rated position surrounding a holiday does not deprive one of the holiday pay benefits of the Clerks' Agreement. Award No. 44 of Public ~~Law~~ Board 1366 takes the other view that the claimant has no holiday standing under the Telegraphers' Agreement while working as a dispatcher.

The claimant retained his seniority rights under the BBAC Agreement while working as a dispatcher. When he returned to service as a telegrapher he could avail himself of the benefits of that agreement. In the meanwhile however, the claimant's employment including rate of pay is governed by the Dispatchers' Agreement. We fail to see the logic in permitting claimant to select certain provisions of the Clerks' Agreement for application while he is performing dispatcher service. When claimant performed service as a dispatcher during a period that included holidays he was required to look to the agreement of the craft under which he was working to determine which benefits would accrue to him by virtue of his service on that day. In the instant case the Clerks' Agreement was not operative as regards the claimant's service on the days in question. Should an employe provide dispatcher service over a period of time which encompasses no holidays he would benefit by virtue of holiday pay being included in the monthly rate. Should an employe provide dispatcher service for a short period of ~~time~~ which encompasses a holiday he ~~may~~ receive less total compensation than he would have received working as a telegrapher ~~over~~ the ~~same~~ period of time. Surely this points to the possibility of an inequity. The inequities which may arise in these types of situations are the proper subject for negotiation. We are not able to selectively apply certain provisions of the ~~BRAC~~ Agreement as requested herein. We find the line of cases holding that an employe cannot be compensated under two agreements to encompass the better view.

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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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:   
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of **February 1981**.

LABOR MEMBER'S DISSENT  
TO  
AWARD NO. 23172, DOCKET CL-22205  
(Referee Franden)

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Award 23172 is in error. The majority ignored a long line of decisions wherein compensation credited to a Telegrapher on the appropriate "qualifying days" while working, for example, as a Train Dispatcher, as in this case, qualified the Claimant for "holiday pay" under agreements such as the one set forth at Pages one through three of this Award 23172.

See for example, Third Division Awards:

11317	(Moore)
11551	(Webster)
14501	(Dorsey)
15685	(Dorsey)
16457	<b>(Mesigh)</b>
16596	(McGovern)
18261	(Dolnick)
18953	(Ritter)
19715	(Rubenstein)
20585	(Lieberman)
20725	(Lieberman)
21848	(Mead)
22086	(Marx)
22198	(Marx)

and others cited therein. Several awards of Special Boards of Adjustment have held that **Holiday** Pay Agreements, such as here involved, were carefully drawn so as not to disqualify **employees**, such as Claimant herein, when compensation credited to him during

the "qualifying period" was earned as a result of Claimant's dual seniority status. See for example, Awards 34 and 38 of Public Law Board **No.** 713 (Dolnick), Award 9 of Public Law Board No. 352 (Weston), Award 37 of Special Board of Adjustment No. 122 (**Gilden**) and Award 82 of Special Board of Adjustment **No.** 192 (Robertson).

While the majority herein confesses to being unable to see the logic in treating Claimant the same as in the earlier cited awards, a close look at the original and revised proposal by the majority appears to reveal the majority's own biased "logic." In the Referee's proposed award, after making erroneous statements about holiday pay for Train Dispatchers being included in their regular monthly pay and then writing:

"That is the way the Agreements are **written.**"

The Referee, after re-argument, caused the statement quoted immediately above to be expunged from the proposed award while the equally erroneous statements that holiday pay for Train Dispatchers etc., were left intact. Unable to "get around" prior awards wherein the one and only exception as to "compensation paid him by the *Carrier*" was restricted, as is evident at page three of this Award No. 23172, to excluding that compensation paid under sick-leave rules or practices, the Referee decided to simply remove Claimant and his employment from any coverage of **the Holiday** Pay Agreement. The Referee added the language:

"Surely this points to the possibility of an inequity. The inequities which may arise in these **types** of situations are the proper subject for negotiations.

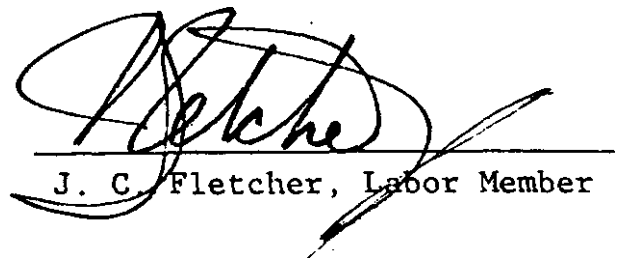
\* \* \* \* \*

"We find the line of cases holding that an employe cannot be compensated under two agreements to **encompass** the better view."

In other words, by holding to the original erroneous decision, the majority attempted by this Award No. 23172 to add another exception to the agreement rules shown as Section 1(a) through **3(ii)**, pages one through three of Award No. 23172.

In doing so, the Carrier party to this dispute reaps the benefits while the Referee sees that the "inequities" are **visited** on the Claimant.

Award 23172 is totally in error, and I vigorously dissent thereto.



J. C. Fletcher, Labor Member