

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23487
Docket Number CL-23987

John B. LaRocco, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:
(GL-9435) that:

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to compensate Clerk A. Statt eight (8) hours' pay at the pro rata rate of Position No. GT-494 for January 1, 1980, as holiday pay.
2. The Carrier shall now be required to compensate Clerk A. Statt eight (8) hours' pay at the rate of Position No. GT-494 as holiday pay for January 1, 1980.

OPINION OF BOARD: Claimant was regularly assigned to Position No. GT-494 (Yard Clerk-Weighmaster) until Monday, December 31, 1979 when she was displaced by a more senior employee as the result of a reduction in force. On Thursday, January 3, 1980, claimant elected to invoke her seniority rights, in accord with Rule 19 of the applicable agreement, to fill a regularly assigned relief position (Position No. GT-1186R). Position No. GT-494 has scheduled rest days every Monday and Tuesday. Position No. GT-1186R has scheduled rest days every Tuesday and Wednesday. The Carrier did not pay the claimant for the New Years Day holiday. The claimant now urges us to award her eight hours of holiday pay for Tuesday, January 1, 1980.

The Organization contends the claimant is entitled to holiday pay because she filled her regular assignment the last workday before the holiday and reported to Position No. GT-1186R the first workday after the holiday. According to the Organization, the claimant should not be deprived of holiday pay since she had seven calendar days (pursuant to Rule 19) to exercise her seniority rights after she was displaced. The Carrier argues that between the time claimant was displaced and the time she elected to fill Position No. GT-1186R, she was not a regularly assigned employee. To receive holiday pay as other than a regularly assigned employee, she must satisfy one of the two conditions set forth in Section 3 of Supplement No. 7 - the Nonoperating National Holiday Provisions.

We agree with the Carrier's position. Rule 19 is separate and distinct from the Holiday Agreement and so it is the latter which controls holiday pay. In this case, when claimant decided not to immediately exercise her seniority rights on Monday, December 31, 1979, she lost the status of a regularly assigned employee and she did not regain regularly assigned status until January 3, 1980. Under the following unambiguous terms of Section 3 of the Holiday Agreement (which refer to "days" rather than "workdays"), other than regularly assigned employees must meet one of these two conditions on the day before and the day after the holiday to be entitled to holiday pay:

"(i) Compensation for service paid by the carrier is credited; or

"(ii) Such employee was available for service."

By her own actions, claimant was not available for service on December 31, 1979 and January 2, 1980. Claimant failed to satisfy either condition and, thus, she has no right to receive holiday pay for January 1, 1980.

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 8th day of January 1982.