NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24048

THIRD DIVISION Docket Number CL-23800

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9306) that :

Claim No. 1 (File Balt.-2609, Carrier File CG-12000)

(a) The Carrier violated the Clerical Agreement when they did not properly pay Robert J. Bonuccelli during the month of December, 1976.

(b) The Carrier should now recompute Robert J. Bonuccelli's pay for December, 1976 and allow him $68.88 in addition to any other pay due him for this period.

Claim No. 2 (File Balt.-2610, Carrier File CG-12001)

(a) The Carrier violated the Clerical Agreement when they did not properly pay Norman W. Stewart during the month of December, 1976.

(b) The Carrier should now recompute Norman W. Stewart's pay for December, 1976 and allow him $69.86 in addition to any other pay due him for this period.

Claim No. 3 (File Balt.-2675, Carrier File CG-12112)

(a) The Carrier violated terms of the Clerks' Agreement during the month of Dec., 1976 when they did not properly pay Mr. Earl H. Harris for the month of Dec., 1976 and,

(b) Mr. Earl H. Harris, incumbent of E-l Traveling Accountant, rate $1,859.00 per month should now be allowed 1 days' pay at the pro rata rate of $1,859.00 per month because of this violation.

Claim No. 4 (File Balt.-2983, Carrier File CG-13400)

(a) The Carrier violated the Clerical Agreement on Sept. 16, 1977 when they deducted $81.47 from R. H. Powers pay check for pay period ending Sept. 2, 1977, Draft No. 38095 for one (1) days Vacation Pay taken on July 4, 1977, and

(b) The Carrier should now restore R. Ii. Towers pay in the amount of $81.47, pay for the one (1) days vacation taken on July 4, 1977, which has been denied him because of this violation.

Claim No. 5 (File CC-238, Carrier File CG-13484)

(a) The Carrier violated terms of the Clerks' Agreement Dec. 25, 1977 when they charged Mr. C. 0. Reynolds with an extra days vacation when he took his scheduled vacation during period Dec. 21 to Dec. 25, 1977, thus causing him to lose one extra day off during this period and,

(b) Hr. C. 0. Reynolds, Chief Clerk, rate of $1827.31 per month should now be allowed one days pay at tbe punitive rate of $1827.31 per month because of this violatim.

Claim No. 6 (File CC-243, Carrier File CG-13859)

(a) The Carrier violated terms of the Clerks' Agreement March 24, 1978 when they allowed Mr. Ball 5 days vacation, but did not allow him pay for the Holiday and,

(b) Mr. G. W. Ball, incumbent of A-51 Console Operator Position, rate $1751.13 per month should now be allowed 1 day at $1751.13 per month because of this violation.

Claim No. 7 (File HV-906, Carrier File CG-13673)

(a) The Carrier violated the Clerical Agreement when they did not properly pay Joe W. Mejia during the month of January, 1978.

(b) The Carrier should now recompute Joe W. Mejia's pay for January, 1978 and allow him $69.11 in addition to any other pay due him for this period.

Claim No. 8 (File HV-907, Carrier File CG-13660)

(a) The Carrier violated the Clerical Agreement when they did not properly pay Saily J. Petrusky during the month of January, 1978.

(b) The Carrier should now recompute Sally J. Petrusky's pay for January 1978 and allow her $69.79 in addition to any other pay due her for this period.

OPINION OF BOARD: This claim involves eight different Claimants and may be summarized as follows. Each Claimant listed below Was a monthly salaried employee at the time his or her claim arose. Each Claimant requested vacation days in a month which included a holiday specified in Rule 39(b) of the Agreement. In each case, the holiday specified in Rule 39½ occurred during the scheduled vacation period of the Claimant. Thus, Carrier charged each Claimant with a vacation day for that holiday but did not pay the Claimant beyond his or her monthly salary for the month in question. Accordingly, each Claimant seeks one day's pay for the month in which he or she requested vacation in addition to his or her regular monthly salary.

CLAIMANT	HOLIDAY CHARGED TO VACATION	DAILY OR MONTHLY PAY
1. R. J. Bonuccelli	December 25, 1976	$68.88 (daily)
2. N. W. Stewart	December 25, 1976	$69.86 (daily)
3. E. H. Harris	December 25, 1976	$1,859.00(monthly)
4.R. H. Powers	July 4, 1977	$81.47 (daily)
5. C. O. Reynolds	December 25, 1977	$1,827.31(monthly)
6. G. W. Ball	March 24,1978	$1,751.13 (monthly)
7. J. W. Mejia	January, 1978	$69.11 (daily)
8. S. J. Petrusky	January, 1978	$69.79 (daily)

The Organization argues that the failure of Carrier to pay the Claimants for the holidays specified above violate8 Sections 3 and 4 of the September 1, 1949 Agreement between the parties. These Sections state:

> "3. The monthly rate of an employe will be compensated 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 traditional part of the working days in the particular calender month. For example, in a calendar month containing 21 working days an employe 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."

According to the Organization, holidays have never been considered as work days for monthly rated employes on this property. Since each Claimant was entitled to an annual vacation of consecutive workdays with pay, Carrier could not include a holiday as one of the Claimant's vacation days. Accordingly, the Organization seeks one day's pay for each of the Claimants specified above.

Carrier, on the other hand, contends that each Claimant was paid his or her full monthly salary for the months in question. It argues that it was never the intent of the parties for monthly employes to receive more than their regular monthly salary. Thus, Carder asks that the claim be denied in its entirety.

Award No. 22634 on this property deals with facts virtually identical to the ones in these claims. There, we sustained a claim similar to those here. No evidence has been introduced to indicate that our decision there was palpably erroneous. In the absence of such proof, consistent with the time honored principle of stare decisis, we will sustain the instant claims as presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record -and all the evidence, finds andholds:

That the parties waived oral bearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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; end

That the Agre-t was violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November 1982.