

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24194
Docket Number CL-23466

Herbert Fishgold, Referee

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

PARTIES TO DISPUTE: (

(Burlington Northern Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9289)
that:

1. Carrier violated the provisions of the TC Schedule Agreement by not properly compensating Mr. P. W. Watts, Second Telegrapher, North Portland, Oregon, for Washington's, Birthday Holiday, February 19, 1979.

2. Carrier shall now compensate Mr. P. W. Watts eight (8) hours pro rata rate as holiday pay for February 19, 1979.

OPINION OF BOARD: Claimant contends he is entitled to 8 hours holiday pay for the President's Day holiday of February 19, 1979. The record shows that Sunday, February 18, 1979, was the last workday of Claimant's vacation period, and Monday, February 19, 1979, was a normal rest day for Claimant which was also a holiday: In order to resolve this claim, it is necessary to determine whether the February 19, 1979 holiday occurred during or subsequent to Claimant's assigned 15-day vacation.

The claim is based on Section 3 of Article II of the National Agreement dated August 21, 1954, as amended, which reads:

"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 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 day of the preceding workweek shall be considered the workday **immediately** preceding the holiday."

The Organization relies on Section 3 as interpreted by Third Division Awards, e.g., Award 20309, to establish the principle that the vacation period does not include rest days, or holidays that occur prior to the **commencement** of the first paid vacation day, and after the termination of the last paid vacation day. Thus, the Organization points out, Claimant completed his vacation period on his 15th vacation day, Sunday, February 18, 1979, and the February 19, 1979 holiday fell on the first of his 2 rest days. Claimant worked on February 21, 1979, his next scheduled work day. Therefore, the February 19 holiday qualifying

days were his last vacation day, February 18, which preceded the holiday and February 21, his first workday following the holidays, both of which he received compensation for. This, the Organization contends, satisfies the holiday pay requirements of Section 7.

The Carrier asserts that February 19, 1979 was during Claimant's vacation period, citing Third Division Awards 11920 and 15797. Claimant had a vacation of 15 consecutive workdays between January 31 to February 20, 1979. The 19th and 20th were rest days attaching to his work week of February 14 to February 20, and thus, according to the Carrier, a part of Claimant's vacation period. Prior to that vacation, Claimant had been laid off commencing with January 10, performing no work until he returned to work on February 21, 1979. The Carrier contends that, in accordance with the provisions of Section 7-A of the Agreement, when a holiday falls within an employee's vacation period, the workdays immediately preceding and following the vacation period are considered the work days. Since Claimant did not work the day preceding his vacation, he does not meet the requirements for qualifying for holiday pay.

As noted, the critical determinant in deciding this claim is whether a rest day, which also happens to be a holiday, is to be included in the definition of a vacation period for purposes of Sections 3 and 7. While both the Organization and the Carrier cite Third Division Awards to support their respective positions, the Board herein notes that the record evidence indicates that the Carrier herein has previously interpreted and applied Section 7 on the property consistent with the claim of the Organization. On two occasions, in 1969 and 1977, the question of whether an employee had to perform actual service on the work day following the vacation day in order to qualify for holiday pay on a holiday either preceding or following the day of vacation was considered by the Carrier. On both occasions, since Claimants had received vacation compensation on the workday immediately preceding the holiday, and worked on the next workday immediately following the holiday, they were entitled to holiday pay compensation. In the instant case, the holiday fell on a rest day for which Claimant was available for service, and he had completed his vacation period on February 18, 1979. Accordingly, consistent with the application on this property in past situations involving Section 7(a), holidays falling on rest days immediately following a vacation period are not to be viewed as holidays falling during a vacation period.

As Claimant received vacation pay credited to Sunday, February 18, 1979, the workday immediately preceding the President's Birthday holiday, and as he worked and received compensation credited to Wednesday, February 21, 1979, his next scheduled workday immediately following the holiday, he qualified for the eight hours holiday pay at straight-time and the claim will be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.