

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24429
Docket Number CL-24416

Robert Silagi, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9533)
that:

(1) Carrier violated the Agreement in effect between the parties, when it failed and refused to grant Mr. K. C. Carlson, East Salamanca, New York, eight (8) hours holiday pay for the dates of December 24 (Christmas Eve) and December 25, (Christmas Day) 1980, in accordance with Holiday Agreement of July 23, 1975, and

(2) Carrier shall now, as a result, be required to compensate Claimant K. C. Carlson, eight (8) hours' pay for each (Holiday) date of December 24 and 25, 1980.

OPINION OF BOARD: This dispute concerns the Carrier's refusal to pay holiday pay on the Christmas Eve and Christmas day holidays although Claimant did perform services on the day immediately preceding and following such holidays. Services on the day immediately preceding Christmas Eve were performed on a "workday", however, services on the day following Christmas day were performed on Claimant's rest day. The issue to be decided is whether services performed on a day of rest qualifies Claimant for holiday pay. The facts are not in dispute.

Claimant is regularly assigned Saturday through Wednesday with rest days of Thursday and Friday. On the week in question Claimant worked his regular assignment through Tuesday and was available on Wednesday, December 24th but was not used. He did not work Thursday, Christmas Day. On Friday, December 26th claimant was called on overtime to fill a vacation vacancy. Following said tour of duty Claimant became ill and did not resume his scheduled position until Wednesday, December 30th.

The July 23, 1975 National Mediation Agreement, Article VIII - Holidays, as implemented by Agreement of the parties on June 16, 1976 reads in pertinent part:

"Section 4 - Special Qualifying Provision - Employee Qualifying for Both Christmas Eve and Christmas Day.

Article II, Section 3 of the Agreement of August 21, 1954 as such Section has been amended, is further amended by addition of the following:

An employee who meets all other qualifying requirements will qualify for holiday pay for both Christmas Eve and Christmas

Day if on the 'work-day' or the 'day', as the case may be, immediately preceding the Christmas Eve holiday he fulfills the qualifying requirements applicable to the 'work-day' or the 'day' before the holiday and on the 'workday' or the 'day', as the case may be, immediately following the Christmas Day holiday he fulfills the qualifying requirements applicable to the 'workday' or the 'day' after the holiday.

An employee who does not qualify for holiday pay for both Christmas Eve and Christmas Day may qualify for holiday pay for either Christmas Eve or Christmas Day under the provisions applicable to holidays generally."

The Employees urge the non-technical approach adopted in an Award issued in 1974, No. 162 of Public Law Board No. 405 wherein it was held that an employee who "worked on days preceding the holiday and following it is thus entitled to compensation..." The Carrier cites a 1979 Third Division Award 22268-Hamilton, in support of its position.

Carrier argues that "workday" as used herein pertains to regularly assigned employees who have a set workweek. "Day" as used herein applies to extra or unassigned employees who have no set workweek and, therefore, the calendar days before and after each holiday are the governing days for them. Carrier alleges that Claimant's service performed on his rest day is immaterial since such service would not have enabled him to meet the basic qualifications for holiday pay.

Under the circumstances presented in this case the Carrier is correct in its interpretation of the Rule. The claim must therefore be denied.

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.

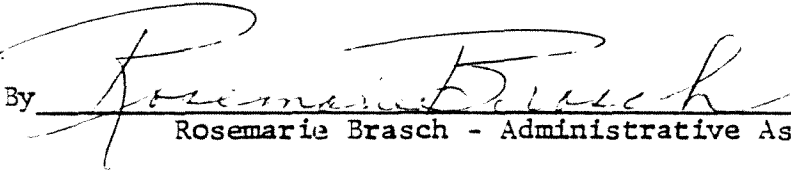
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.