

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25322

Docket Number CL-25008

I. M. Lieberman, Referee

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

PARTIES TO DISPUTE: (

(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9771) that:

"(1) The **Carrier** violated the current National Vacation and Holiday Agreements, when it refused to properly compensate Traffic Control Center Train Director, Mr. J. C. Hurley for the Thanksgiving **Holiday**, November 26, 1981, while off on vacation and the holiday occurring on a work day of his work week and his position was required to be worked on the holiday.

(2) The Carrier shall now compensate J. C. Hurley for eight (8) hours pay at the time and one-half rate of his regularly assigned position in addition to the amount he has already received."

OPINION OF BOARD: Initially, Carrier argues that the Claim **herein** is invalid under the time **limits** and should be dismissed. Article V, Section 1(b) of the Agreement **provides** in pertinent part:

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed,***"

Carrier maintains that the initial Claim was filed January 20, 1982, and was denied February 4, 1982. The appeal letter, according to Carrier, **was postmarked** April 5, 1982, and received April 6, 1982, a matter of 61 days and in excess of the period provided above. The Organization states that the Carrier denial of the initial Claim although dated February 4, 1982, was not received until February 8, 1982. Further the Organization **argues that** the appeal letter dated April 3, 1982, and received April 6th was well within the 60 day period. The Board notes that Carrier's position is grounded largely on the ruling of the National Disputes Committee (Decision **16**) in which it was held that the date of receipt determines the tolling of the time limits (**see** also Award 14695 among others). Carrier is quite correct in its theory; however in application the date of receipt is also applicable in this case to the date of receipt of Carrier's denial letter dated February 4, 1982. Thus, the time limits were not violated by Petitioner's appeal and Carrier's position must be rejected.

The record indicates that there were three Train Directors' positions on the day in question, the Thanksgiving holiday. In view of Claimant's vacation and the small holiday work load Carrier elected to use only **two** Directors that day and did not fill Claimant's position. Therefore, Organization is incorrect in its factual assumptions which included the statement that Claimant's position was filled on the holiday.

It is clear from the provisions of the Vacation Agreement that Carrier was within its rights in blanking Claimant's position on the day in question (Section 6, Section **12(b)**). While Organization is correct in its thesis requiring twenty-eight hours pay (**see** the May 25, 1970, **Oram-Lowry** Letter), the facts do not fit the theoretical pattern in view of the position being blanked. The conclusion is buttressed by reference to Award No. 1 of Public Law Board No. 2501 between these same parties. The Claim must be denied.

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


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois this 15th day of March 1985.