

*no rule cited -  
Carrier fully aware  
of the issue*

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25966  
Docket Number MW-25775

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company  
(Northern Region)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly withheld three days of holiday pay [Christmas Eve (December 24, 1982), Christmas Day (December 25, 1982) and New Year's Day (January 1, 1983)] from the pay check of Trackman J. Molina (System File C-TC-1612/MG-3956).

(2) Because of the aforesaid violation, Trackman J. Molina shall be allowed twenty-four (24) hours of pay at his straight time rate."

OPINION OF BOARD: Claimant was entitled to 20 days' vacation in 1982 (although he was within one year of qualifying for 25 vacation days). The record shows convincingly that he was advised by his Foreman that he was entitled to 25 days for 1982. Claimant scheduled in advance and took "vacation" from Monday, December 27 through December 31, 1982 as the last five of 25 days. When the Carrier later determined that the Claimant had taken the five days without being entitled to such vacation, regular pay for this period was withheld. This is not in contention here.

The Carrier, however, also withheld pay for three holidays -- December 24, December 25, and January 1 -- on the grounds that the Claimant had failed to meet the requirement of the National Holiday Agreement, Section 3, which reads in pertinent part as follows:

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

The Carrier argues that by failing to work December 27, the Claimant was not eligible for December 24 and 25 holidays (December 26 being a non-scheduled day); and by failing to work December 31, he was not eligible for the January 1 holiday.

If in fact the employee had simply failed to report for work on the two specified qualifying days, there can be no question as to his ineligibility for pay for the three holidays. The Board is convinced from the record that the Claimant relied upon advice of his Foreman that he was eligible to take the week in question as vacation. If he had been entitled to vacation in that period, there is no question but that he would have qualified for the holiday pay (since compensation would have been credited to him).

Whether the Foreman acted with proper authority or had sought proper information before scheduling the Claimant on vacation is not in point. The Claimant understandably relied upon his Foreman's advice, without being concerned with the source of his authority. It can be argued that the Claimant himself should have been familiar with the holiday eligibility rule. In the Board's view, however, this would go to the question of the vacation pay, which the Carrier indeed withheld.

As to the holiday pay, the Claimant worked the workdays before and after the mistaken "vacation" period. By the Foreman's action, he was not scheduled to work December 27-31. Withholding of the holiday pay in these circumstances is not a reasonable interpretation of the rule restrictions as to holiday pay eligibility.

The Carrier makes the procedural point that the claim is defective, because no rule was specified as being violated. The claim handling process reveals that the Carrier was fully cognizant of the nature of the claim from the outset in its concern with the holiday rule. The Carrier took no objection to the form of the claim on the property. The procedural objection is without merit.

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:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.