

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10147) that:

(a) Carrier violated the provisions of the current Clerks' Agreement when it failed and/or refused to properly compensate Mr. M. E. Rogers for holidays of November 28 and 29, 1985, and

(b) Mr. M. E. Rogers shall now be compensated eight (8) hours' pay at the pro rata rate of Car Clerk Position on Relief No. 9307 for November 28 and 29, 1985, in addition to any other compensation Claimant may have received for these days."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was, at the time of the incident that gave rise to this case, employed by Carrier as a regularly assigned Relief Car Clerk. Claimant also, on occasion, protected short vacancies as a Dispatcher. Claimant worked as a Clerk on the Wednesday before Thanksgiving and on the Saturday after Thanksgiving 1985. His position as a Clerk was blanked on Thanksgiving and the day after (both recognized holidays).

On the two holidays when his position was blanked, Claimant performed services as a Dispatcher. Claimant presented timesheets claiming holiday pay as a Clerk, as well as pay as a Dispatcher, for November 28 and 29, 1985, the two holidays in question. Carrier denied the holiday pay on the basis that on November 28 and 29, Claimant was working as a Train Dispatcher and subject to the Train Dispatchers' Agreement, not the Clerks' Agreement.

The Organization contends that Claimant worked the day before and the day after the holiday and, as a consequence, he qualified for holiday pay under the Clerks' Agreement. It makes no difference that he worked as a Dispatcher on the two holidays when his regular assignment was blanked.

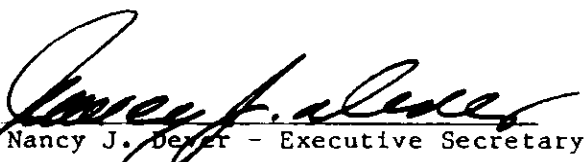
The issue before this Board is whether an employee can receive holiday pay as a Clerk when he or she is working those holidays as a Train Dispatcher. A review of decisions on the subject by this Board and Public Law Boards reveals that the more reasoned Awards do not allow employees to receive benefits from one Agreement while working under another. At this stage in its deliberations, the Board has adopted that principle.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.

LABOR MEMBER'S DISSENT TO  
AWARD 28336, DOCKET CL-27548  
(REFEREE DENNIS)

The Majority Opinion has erred in the case at bar and has issued a decision which is contrary to the weighted authority on the subject within the industry.

The issue in dispute is not something new and has been adjudicated many times in the past sustaining the Organization's position. The Board has repeatedly ruled that Section 3 of the August 21, 1954 Agreement means that the parties to the Agreement recognized that it is not unusual for regularly assigned employees under non-operating agreements to hold dual seniority. There was no intent in that Agreement to disqualify a regularly assigned employee under the Clerks Agreement for holiday pay because he may have worked under another Agreement either on the day before or on the day after, or on the holiday itself. The Agreement was carefully written to preclude such a result.

Award 28336 is contrary to its better reasoned predecessors on the subject such as Third Division Awards 11317, 11551, 11977, 14501, 18261, 20585 and 20725 and because of such it carries no precedential value. The Award is palpably wrong and requires strenuous dissent.

  
William R. Miller

May 4, 1990  
DATE