

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31132
Docket No. CL-31217
95-3-93-3-216

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10943) that:

- (1) Carrier violated the Agreement between the Parties, when on Friday, November 29, 1991, it failed to properly compensate Clark J. B. Haltom, a regularly assigned monthly rated employe, for Holiday Pay, for the day after the Thanksgiving Day Holiday.
- (2) Carrier shall now be required to compensate Clerk J. B. Haltom for one (1) days' pay at the pro rata rate of \$124.64, attached to his regular position at Memphis, Tennessee, for Holiday Pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 the incumbent of a six-day per week monthly-rated position, whose rate was predicated upon an all-service performed basis. He was on vacation during the week of November 25 and received vacation pay on Friday, November 29, 1991, the day after Thanksgiving Day. In this claim, he also seeks one days' pay as

Holiday Pay for that day. Carrier declined the claim on grounds that Claimant had not "performed service" on November 29, 1991.

Other national holidays, including Thanksgiving Day itself, were "rolled into" the monthly rate of positions like Claimant's under the terms of Article II of the National Agreement of August 21, 1954. However, the subsequently granted holiday of the day after Thanksgiving Day was not "rolled into" that monthly rate. Controlling in this case is the following language from the December 21, 1981 amended National Holiday Rule:

"ARTICLE IV
HOLIDAYS

Effective January 1, 1983, Article II of the Agreement of August 21, 1954, as amended, insofar as applicable to the employees covered by this Agreement, is hereby further amended in the following respects:

(a) Add the day after Thanksgiving Day and substitute New Year's Eve (the day before New Year's Day is observed) for Veterans Day.

(b) The holiday pay qualifications for Christmas Eve - Christmas shall also be applicable to the Thanksgiving Day - day after Thanksgiving Day and the New Year's Eve - New Year's Day holidays.

(c) In addition to their established monthly compensation, employees performing service on the day after Thanksgiving Day on a monthly rated position (the rate of which is predicated on an all-service performed basis) shall receive eight hours pay at the equivalent straight time rate, or payment as required by any local rule, whichever is greater.

(d) A monthly rated employee occupying a 5-day assignment on a position with Friday as an assigned rest day also shall receive eight hours' pay at the equivalent straight time rate for the day after Thanksgiving Day, provided compensation paid such employee by the carrier is credited to the work days immediately preceding Thanksgiving Day and immediately following the day after Thanksgiving Day.

(e) Except as specifically provided in paragraph (c) above, existing rules and practices thereunder governing whether an employee works on a holiday and the

payment for work performed on a holiday are extended to apply to the day after Thanksgiving Day and New Year's Day (the day before New Year's Day is observed) in the same manner as to other holidays listed or referred to therein." (Underscore Added)

Under the plain and unambiguous language of Article IV (c) supra, Claimant did not qualify for holiday pay on the day after Thanksgiving Day 1991, because he was not "performing service on the day after Thanksgiving Day." On that day, Friday, November 29, 1991, he did not perform service, but was on vacation and received vacation pay. If the negotiators of the National Vacation Rule intended that "receiving compensation" was sufficient to qualify for payment of holiday pay for the day after Thanksgiving Day, presumably they would have used language similar to that which they used in Article IV, Section (d). Nor does the specific language of Article IV, Section (c) leave room for an interpretation that performing service on the last work day immediately preceding or following the vacation period is sufficient to qualify for the day after Thanksgiving Day holiday pay. Under the plain language of Article IV, Section (c), Claimant had to be "performing service" on November 29, 1991, in order to qualify for holiday pay for the day after Thanksgiving Day 1991.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.