

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31437
Docket No. MW-31355
96-3-93-3-294

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation
(AMTRAK)

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

- (1) The Carrier violated the Agreement when it failed and refused to compensate Mr. J. McSorley for the Christmas Eve, Christmas Day (1990) and New Year's Day (1991) holidays (System File NEC-BMWE-SD-3058 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. McSorley shall be compensated eight (8) hours' pay, at his straight time rate, for each of the holidays cited."

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 suffered an off duty injury and was off work from December 13, 1990 until September 20, 1991.

The claim is for Christmas Eve, Christmas Day and New Year's Day holiday pay based upon the hypothesis that because Claimant was

off for medical reasons, he was other than regularly assigned and as such, he qualified for holiday pay.

It is the Carrier's position that simply because Claimant was off on a medical leave, his status as a regularly assigned employee did not change and because he rendered no service on the work days preceding or following the holidays, he did not qualify for holiday pay.

The Carrier's position is more in keeping with the Holiday Pay Rule. Claimant was regularly assigned when he incurred the off-duty injury. There is no argument over this fact. Claimant's status from December 13, 1990 through September 20, 1991 was that of an employee regularly assigned who was off work because of a medical leave of absence. If such leave of absence changed Claimant's status from regularly assigned to other than regularly assigned, something more than conjecture must be in the record.

The claim will be denied for lack of support.

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 25th day of April 1996.