

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33497
Docket No. CL-34670
99-3-98-3-324**

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the organization (GL-12030) that:

(a) This claim is filed on behalf of Marlene Gilman, Clerk, North Billerica, MA. The claim is for February 17, 1997, at the straight time rate for eight (8) hours.

(b) The Carrier violated the Agreement when it docked Ms. Gilman for the President’s Day holiday, even though she worked her scheduled days before and after the holiday.

(c) The Rule violated is 19.1 through 19.7, as well as all other Rules of the Agreement.

(d) This claim is valid and must be paid.”

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 were given due notice of hearing thereon.

Claimant was regularly assigned as an Accounting Clerk Monday through Friday with hours 8:00 a.m. to 5:00 p.m.. Monday, February 17, 1997, was a holiday. In order to qualify for holiday pay, Claimant had to work on Friday, February 14, and Tuesday, February 18, 1997. Rule 19.2 which pertains to qualification for holiday pay reads:

“19.2 To be eligible for the holiday pay provided for in paragraph 19.1, employees must either work or be available for work on the last work day before and the first work day after the holiday. Other than regularly assigned, employees will be eligible for the paid holidays or pay in lieu thereof, provided (1) compensation for service paid them by the Carrier is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday and (2) they have had a seniority date for at least sixty (60) days or have sixty (60) days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with the union shop agreement, or disapproval of application for employment.”

It should be noted that this Carrier's holiday pay provision differs from most other Agreements in that this Carrier's Agreement calls for “work” on the day before

and day after. Other Agreements call for “compensated pay” on the day before and the day after.

Board’s have held that “compensated pay” means anytime paid for, be it one hour or eight hours pay.

The Carrier in this case argues that “work” means eight hours.

According to the record before this Board, the Carrier negotiated a Rule with other employees which reads:

“16.2 A regularly assigned employee will qualify for the holiday pay provided in paragraph 16.3 if compensation paid him by the Carrier is credited to the full work-day immediately preceding and the full work-day immediately following such holidays. Employees who work on the holiday will be paid one the on-half times the hourly rate in addition to the eight (8) hours holiday pay.”

The Carrier was unsuccessful in obtaining a similar provision with this Organization.

The facts in this case show that on the day after the holiday the Claimant worked six and one-half hours, marking off one and one-half hours for personal business. Because Claimant did not work a full eight hours the claim for holiday pay was denied. The Organization argues the Claimant qualified for holiday pay by “working” on the day prior to and the day after the holiday.

The Carrier relies on the definition of a day’s work as spelled out in Rule 18.1 which reads:

“18.1 Except as otherwise provided in this Agreement, a day’s work will consist of not more than eight (8) consecutive hours, exclusive of meal period, for which eight (8) hours pay will be allowed.”

However, it should be noted Rule 18.2 requires only that an employee work, without any reference to Rule 18.1.

It appears that the Carrier is trying to obtain through arbitration that which it failed to obtain at the bargaining table. Claimant worked on both qualifying days, and therefore, is entitled to holiday pay. The Agreement was violated.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 22nd day of September 1999.