# Award No. 8528
# Docket No. CL-8269

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Harold M. Weston, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

## THE TEXAS AND PACIFIC RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) The Carrier violated the provisions of Article 2, Sections 1 and 3 of the Agreement signed at Chicago, Illinois, August 21, 1954 governing pay for holidays and qualifications for such pay, when Mrs. C. O. Craven was denied compensation for February 22, 1955; and

(2) That Mrs. C. O. Craven be compensated at pro rata rate for the said date February 22, 1955.

**EMPLOYES' STATEMENT OF CLAIM:** (1) Mrs. C. O. Craven entered service in the office of Auditor of Revenue Seniority Section No. 4 on January 2, 1932 and has remained in continuous service since that date.

(2) She performed compensated service on February 21, 1955 but was absent from duty February 23rd and 24th account death of her father.

(3) She was compensated for both days, February 23 and February 24, 1955 account of her father's death under an established policy and practice which has existed many years.

(4) Her compensation for February 23rd and 24th was not made under any sick leave rule or practice, nor was the two days charged against her sick time allowance.

Formal claim was filed for and in behalf of Mrs. C. O. Craven on April 21, 1955 with Auditor Revenue, Mr. J. R. Tedford by Local Chairman Gooch, (See Employes' Exhibit No. 1).

Mr. Tedford declined the claim of April 28, 1955. (See Employes' Exhibit No. 2.) On June 27, 1955 Division Chairman Gooch appealed from Mr.

"Compensation paid under sick leave rules or practices will not be considered as compensation for purposes of this rule."

This is especially true because the Emergency Board had recommended that we require work on the qualifying work days, and the carriers had only agreed to modify it in this manner to give the employes the benefit of the doubt about what the Board had intended in certain cases. There was never any question but that the Emergency Board did not intend for holiday pay to accrue in a case like this one. Neither did the men who drafted the Agreement of August 21, 1954, on which this claim is based.

On the merits, therefore, this claim should be denied, because: (1) The claimant's pay for Wednesday was a voluntary gift. So it was not compensation at all and so did not come under the rule. (2) Even if the carrier's policy of making similar gifts had been established by agreement as an obligation, so that the resulting pay could have been described as "compensation" provided by the agreement, it would have been compensation paid under a practice, and so it would have come within the exception to the rule.

Therefore, this claim should be dismissed or denied.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The essential facts of this case are not in dispute. Article II, the holiday provision of the Agreement that is here controlling, provides for seven paid holidays, including Washington's Birthday, for qualified employes. By the terms of that provision, an employe is qualified if he is a regularly assigned hourly and daily rated employe and "if compensation paid by the Carrier is credited to the workdays immediately preceding and following" the holiday. The claimant, a regularly assigned hourly and daily rated clerical employe with over twenty-six years service with the Carrier, performed compensated service on February 21 but was absent from work on February 23 and 24 because of the death of her father. If she received no pay of any kind for February 23 from the Carrier, there is no doubt that, under the terms of the Agreement, she would not be entitled to holiday pay for Washington's Birthday. However, the Carrier did pay the claimant for February 23 and 24, and the question now presented is whether or not she is entitled to be paid for the holiday, February 22.

The Carrier contends that this claim is barred from consideration on its merits because of the petitioner's failure to notify the Carrier within sixty days of its final decision that it rejected that decision and intended to appeal from it. This argument is based on Article V of the Agreement and is without merit.

Article V is unambiguous on the point and in sub-paragraph (c) specifically provides that the sixty-day notice requirement only applies to the several steps leading up to the decision of the Carrier's highest officer and is not applicable to appeals from his decision. The same sub-paragraph expressly allows a period of nine months for appeals from the Carrier's highest officer to the National Railroad Adjustment Board and the petitioner has complied with this time requirement. See 2135 (Second Division), cf. 8287.

Turning now to the merits of the case, it may be noted that the following language of Article II of the Agreement is controlling:

> "An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. * * *"
>
> "Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

It is the petitioner's claim that the amounts received from the Carrier for February 23 and 24 constitute "compensation" within the meaning of the language just quoted and that such compensation was "credited" to those days even though she did not work on them. The petitioner argues further that the compensation was not paid under sick-leave rules or practices and therefore the claim must be sustained.

The Carrier contends that the money paid really amounted to a gratuity but that if it were held to be "compensation" the claim must be disallowed since it was paid under a regular practice.

We cannot accept the Carrier's "gratuity" argument since, in our opinion, the amounts paid for February 23 and 24 are "compensation" as the term is ordinarily understood and used, even though the Carrier may not have been obligated to make these payments. However, we are satisfied that the phrase, "sick leave * * * practices," as used in the last sentence of Article II of the Agreement is sufficiently broad to encompass payments by the Carrier to an employe away from work because of the death of her father. This is a reasonable extension of "sick-leave" practices and a contrary result, in our opinion, would be unnecessarily narrow and unrealistic.

The petitioner contends that the payments made in this case for February 23 and 24 were not under any practice. The record, however, indicates quite clearly that there is a well established practice on the part of the Carrier to permit department heads to pay employes for time off when a death occurs in the employe's immediate family. The fact that such payments are left to the discretion of the department heads does not in this case negate the practice. We note in this connection that the petitioner's written submission to this Division, dated December 28, 1955, expressly states that "the Brotherhood would point out to this Honorable Board that compensation for the two days, February 23 and 24, 1955, was paid under a long established practice in the Auditor Revenues office to pay employes for time off when a death occurs in the employe's family; * * *."

In view of the foregoing and since the record developed on the property sufficiently establishes the practice of compensating employes in situations similar to that in the instant case, the claim is denied.

**FINDINGS:** The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively carrier and employe 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 not violated and the claim for holiday pay is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1958.