Award No. 12292
Docket No. MW-11844

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

UNION PACIFIC RAILROAD COMPANY

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

(1) The Carrier improperly counted a holiday as a work day when it computed the monthly pay allowed to Section Foreman A. W. DeLong for the month of January 1959.

(2) The Carrier improperly counted a holiday as a work day when it computed the monthly pay allowed to B & B Foreman Vern Hayes for the month of February, 1959.

(3) Section Foreman DeLong be allowed the difference in pay between the amount he was paid on the basis of 1/22 of his monthly rate of pay for each day he worked in January, 1959 and the amount he should have been paid on the basis of 1/21 of his monthly rate of pay for each day he worked in January, 1959.

(4) B & B Foreman Vern Hayes be allowed the difference in pay between the amount he was paid on the basis of 1/20 of his monthly rate for each day he worked in February, 1959 and the amount he should have been paid on the basis of 1/19 of his monthly rate for each day he worked during the month of February, 1959.

EMPLOYES' STATEMENT OF FACTS: Each of the Claimant employes occupied monthly-rated positions and are regularly assigned to work on Monday through Friday of each week except for the seven holidays designated by Agreement, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas. Stated in other words, Saturdays, Sundays and each of the aforementioned seven holidays are not regular or assigned work days for the Claimant employes.

In 1959, New Year's Day holiday fell on Thursday, January 1, 1959 and was observed on said date, while Washington's Birthday fell on Sunday, February 22 but, in compliance with the provisions of Rule 24, was observed on Monday, February 23, 1959. Hence, for the month of January, there were nine (9)

monthly rate were added under Rule 24 (c) as holiday compensation — 7 holidays multiplied by 8 hours.

On the other hand, rates of pay for hourly and daily rated employes were not computed at a higher rate adjusted for additional holiday hours. Therefore, under Rule 24, such hourly and daily rated employes are allowed a pro rata day for holidays in addition to their regular compensation.

Section Foremen and other monthly rated employes who work a full month which includes a holiday, are never granted any additional compensation for that holiday over and above the regular monthly rate. This is clearly because of the fact, not in dispute on this property or any other property with the Forty-Hour Week agreement in force, that the monthly rate in its determination and computation included pay for the additional holiday hours.

The only element in this claim that is any different is the fact that a full month's compensation is not involved. However, since the monthly rate includes compensation for holiday pay in its computation when that monthly rate is subdivided on a daily basis to get a daily rate, it cannot mean that the daily rate suddenly fails to include holiday compensation. Clearly, therefore, because the daily rate arrived at by simple arithmetic from a monthly rate which does include compensation for holidays must necessarily also include compensation for holidays, then it is totally unreasonable to contend that in computing less than a full month's compensation on the daily basis the holiday cannot be included as a multiple of the daily rate.

Carrier submits that in the light of Rule 24 (c), the method of computation used in this case is the most fair and equitable to all concerned. It has been universally applied to employes in other departments of this Carrier where similar provisions prevail without protest from any of the organizations concerned.

It should be clear that if the Organization demands this method of computation, contrary to the terms of the Agreement, the monthly rate of pay for monthly rated employes would have to be adjusted to exclude pay for holidays in the monthly rate. Obviously, this would result in a reduction in the prevailing monthly rate and there would be no distinction in the method of compensation on this particular question between monthly rated employes on one hand and hourly as well as daily rated employes on the other. Clearly, any such change must be a matter for negotiation between the parties and cannot be accomplished through the guise of a Board award.

This claim is without merit and must be declined.

The Carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed exparte by the Organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Organization in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants held monthly rated positions the compensation for which had been adjusted pursuant to Section 2 (a) of Article II of the August 21, 1954, National Agreement. In determining the monthly

compensation for one Claimant in January, a holiday month, and the other in February, a holiday month, the holidays were considered workdays for compensation.

The question as to whether holidays are to be considered workdays in determining monthly compensation has been before this Board on previous occasions. In recent Award 11552 and predecessor Awards it was held that a holiday is not to be considered a workday in determining monthly compensation.

We are thus of the opinion that to add language to this problem in light of these Awards would defeat the purpose of this Board, in its quest for uniformity.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12292 DOCKET MW-11844

The rule that this Board should strive to achieve uniformity in its decisions is indeed important, but it is subordinate to the rule that palpably erroneous decisions should not be followed and the rule that a conflict in two prior Awards should be resolved by following the Award that is supported by better reasoning. The latter rules should have been applied in Award 12292, for recent Award 11552 which is followed in a "quest for uniformity" is both palpably erroneous and diametrically opposed to sound and well-reasoned Award 10081 (Begley).

In Award 10081 (Begley) the Board agreed with the Carrier that Section 2 (a) of Article II of the August 21, 1954, National Agreement "was never intended to authorize any such increase in the daily rate of a monthly-rated employe" as is contemplated by a claim of this type, and further held that a holiday for which Section 2 (a) adds eight hours' compensation to the annual

rate "may be counted as a work day for the purposes of pro rating a monthly rate . . ." This decision is entirely consistent with the provisions of Section 2 (a). It is equally consistent with the declared objective of the proponents and negotiators of that Section, namely, to **not** grant a wage increase, but to maintain normal take-home pay in pay periods in which the designated holidays occur. (See report to the President by Emergency Board No. 106, dated May 15, 1954.)

Award 11552 (Webster), dealing with the same controlling issue as Award 10081 (Begley) but arriving at a contrary result, is palpably erroneous. The error in Award 11552 is palpable for some of the so-called "predecessor awards" that are cited as the basis for that decision actually provide for counting the holiday as a work day in apportioning the monthly salary, and the other Awards thus cited are expressly distinguishable because of other rules and local interpretations involved. The error in Award 11552 is palpable for the additional reason that the effect thereof is to completely defeat the plainly-stated objective of the parties in adopting Section 2 (a), converting that Section into a simple increase in the daily rate of pay, with no maintenance of normal take-home pay in a semi-monthly pay period in which a holiday occurs.

Award 12292, like Award 11552 upon which it is predicated, is palpably erroneous.

We dissent.

G. L. Naylor
W. M. Roberts
R. E. Black
W. F. Euker
R. A. DeRossett