

Award No. 15141
Docket No. MW-13098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow Section Laborer D. L. Deitchler eight (8) hours' straight time pay for September 5, 1960.

(2) Section Laborer D. L. Deitchler now be allowed eight (8) hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant was regularly assigned to the hourly-rated position of section laborer at Carterville, Montana, with a work week of Monday through Friday. At least 96 hours prior to August 12, 1960, the claimant was notified that his position would be abolished effective with the close of work on Friday, August 12, 1960, and he promptly gave notice of his desire and intention to displace a junior section laborer at Ryegate immediately upon the abolishment of his position at Carterville.

However, prior to exercising physical displacement at Ryegate the claimant was instructed by the Roadmaster to relieve the foreman on the Carterville section during the latter's vacation which would begin on Monday, August 15, 1960 and which would end on Friday, September 2, 1960.

Upon completion of said relief assignment, the claimant assumed his regular position as section laborer at Ryegate, Montana. Thus, the Claimant's continuity of service as a section laborer was broken only by the Carrier's assignment of him to relieve a vacationing foreman from Monday, August 15, 1960 to and including Friday, September 2, 1960.

Inasmuch as the claimant received compensation from the Carrier which was credited to the work days preceding and following the Labor Day Holiday, Mr. R. Lehfeldt, Section Foreman at Ryegate, Montana, reported eight (8)

Therefore, during the period August 15 through September 2, 1960 Claimant Deitchler's status was that of an unassigned employe performing work of a temporary nature on the monthly rated section foreman position at Carterville.

Effective September 6, 1960, Claimant Deitchler commenced filling an hourly rated section laborer position at Ryegate, Montana as the regularly assigned occupant thereof.

Therefore, as of the holiday, September 5, 1960, Claimant Deitchler was an other than regularly assigned employe for vacation pay purposes and as such did not, for reasons that will be fully explained in "Carrier's Position," qualify for nor is he entitled to holiday pay for September 5, 1960.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of March 9, 1961 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. James under date of March 27, 1961.

(Exhibits not reproduced.)

OPINION OF BOARD: Until August 12, 1960, Claimant held a regular position as an hourly rated section laborer at Carterville; on being notified that the position was to be abolished on that date, he gave notice of his intention to displace a junior section laborer at Ryegate. However, before he started actual work at Ryegate, Carrier assigned him to relieve the foreman on the Carterville section during the latter's vacation. Claimant's last work day on that assignment was Friday, September 2. Monday, September 5 was the Labor Day Holiday. Claimant did not work that day. On September 6, Claimant began actually to work on his Ryegate section laborer position.

On his payroll report for the first half of September, the section foreman at Ryegate reported that eight hours of holiday pay had accrued to Claimant for the 1960 Labor Day Holiday. On October 18, 1960, Claimant received his pay check for the first half of September and found it to be \$17.36 short of his expectation. He reported the "shortage" to his foreman, who, in turn, asked for an explanation of the Accounting Department. On November 25 the foreman received and turned over the Claimant a reply from Carrier's Chief Disbursement Accountant, dated November 16, which said that Labor Day Holiday pay had been disallowed for Claimant because he had "worked as a Section Foreman on a monthly rated position the day preceeding the Holiday." On December 5, 1960, Employees' presented a formal claim to Roadmaster Natzel, who is designated to receive claims in the first instance.

In addition to arguing on the merits that Claimant was not eligible for the disputed holiday pay, Carrier argues that the claim is barred because it was not presented to Roadmaster Natzel within 60 days from the date of the occurrence on which it is based, as required by Section 1(a) of Article V of the August 21, 1954 agreement between the parties. The pertinent portion of Article V, Section 1(a) reads:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

Carrier argues that the occurrence on which the claim is based took place on September 5, 1960. We do not agree. On September 5 the Labor Day Holiday fell and on that day Claimant was not required to work. The Claim neither complains of nor is it based on either of these occurrences. The Claim is that Carrier did not pay Claimant for (not on) the Labor Day Holiday. It was on October 18 that Carrier paid Claimant for the period which included the holiday, and paid him an amount less than he thought he was entitled to; that date is when, as stated in the Claim before us, Carrier "failed and refused to allow Section Laborer D. L. Deitchler eight (8) hours' straight time pay for September 5, 1960.", and that is the occurrence on which the claim is based. Claim filed on December 5 was well within the 60 day time limit of Article V, Section 1(a).

On the merits, we see no reason to depart from the approach we took in our Award 11551 involving a similar issue; there we said:

"The purpose of the August 21, 1954 Agreement was to make it possible for the employees to maintain their normal take home pay in weeks during which a holiday occurs. See Award 7721. This was not done by the Carrier here.

A reading of the August 21, 1954 Agreement shows that before a regularly assigned employee is entitled to holiday pay he must have credited compensation for the workday preceding and succeeding the holiday . . . This Claimant had. While it is true that the workday preceding the holiday was worked as a monthly paid employee the Agreement does not provide that both of the days must be as an assigned hourly or daily rated employee and we would be adding language to the Agreement to so hold."

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1967.

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