

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19632
Docket Number TE-19621

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication Division, BRAC)
PARTIES TO DISPUTE: (
(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Portland Terminal Company,
T-C 5831, that:

Carrier violated the June 24, 1968 Holiday Agreement when they denied 8 hours holiday pay to Mr. E. A. Wakefield for July 4, 1970 (a guaranteed holiday if the employee qualifies). Carrier shall be required to compensate Mr. Wakefield 8 hours at the pro rata rate in accordance with the June 24, 1968 Agreement.

OPINION OF BOARD: The claim in this case is that the Carrier violated the June 24, 1968 Holiday Agreement when it denied holiday pay to the claimant for July 4, 1970. Claimant, a telegrapher, also worked as an Extra Train Dispatcher on his rest days. From June 29, 1970 through July 10th, 1970 the Claimant covered the third trick assignment of a regularly assigned train dispatcher. The rest days of that dispatcher's assignment were July 4 and July 5, 1970, when the claimant elected to work as a telegrapher. Since the dispatcher's job is a monthly rated job, the rate of pay includes pay for the holiday, as distinguished from the telegrapher's rate of pay, which does not.

In the view of this Board the claimant was a Train Dispatcher, from June 29 through July 10, 1970, thus coming within the full purview of the Train Dispatcher's Agreement. When he took the Dispatcher's rest days of Saturday and Sunday, July 4 and 5, it was understood that he was to return to the Dispatcher's job on July 6 and was not being released from that assignment.

Referee Herbert J. Mesigh in Award #16457 reviewed and properly stated the position of this Board on such an issue when he distinguished between circumstances where a spare dispatcher is released from a dispatcher assignment and/or is working in the dispatcher field on a day to day assignment, as in the case before him, and the instant case where claimant is temporarily assigned during the entire period in question as a monthly rated Train Dispatcher. The circumstances in Award No. 82 of Special Board of Adjustment No. 192 and Third Division Award No. 11317 cited by the employees are the same as in Award No. 16457 and were discussed by Referee Mesigh in his opinion. The thrust of that decision was expressed in the following language:

"....Foremen covered by their effective agreement do not receive any pay for holidays as such. It is clear that these claimants were 'regularly assigned' to the Foreman's position both before and after a holiday and were under the Foreman's Agreement which did not provide for holiday pay. Such findings by the Second Division would necessarily hold true in the instant dispute if claimant had not been released from his 'regular assignment' as an extra train dispatcher December 31, 1963.

In our opinion, the Second and Third Division Awards relied upon by the parties have in fact established that an employee may not circumvent or misconstrue to his own benefit the intent and language of each respective agreement. He may not attempt to obtain bonus benefits in the form of holiday payments just because he retains position and seniority rights under one agreement while performing under the other. Said holiday payment is determinable by his release from the 'regular assignment' under the one agreement and his reversion to his 'regular assignment' under the other."

The claimant here was paid the higher rate of the dispatcher, which includes holiday pay, and did not revert to his regular assignment as a telegrapher until after July 10. The Carrier did not require him to work as a Telegrapher on the July 4th holiday; he chose to do so.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.