NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20128
Docket Number MW-20074

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Port Terminal Railroad Association

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

(1) The Carrier violated the Agreement when it refused to allow holiday pay to Welder W. S. Williams for Christmas Day, 1971 and for New Year's Day, 1972 (System Time Claim MW-72-1).

(2) Welder W. S. Williams now be allowed sixteen (16) hours of straight-time pay as holiday pay for the above-mentioned two holidays.

OPINION OF BOARD: This claim seeks holiday pay for two holidays (Christmas Day 1971 and New Year's Day 1972), which fell within the Claimant's vacation period of December 12-31, 1971. The Claimant did not perform any compensated service for Carrier on December 10, 1971, the last regular work day of Claimant prior to his vacation, and for this reason, the Carrier asserts that Claimant did not qualify for holiday pay under the current Holiday Agreement.

The record shows that Claimant, a regularly assigned welder, was credited with eight (8) hours pay on December 10, 1971 for an on-the-job injury; he received compensation for work performed on January 3, 1972, the first regular work day after his vacation.

The pertinent provisions of the Holiday Agreement are found in Article II of the May 17, 1968 National Agreement, as amended effective January 1, 1968, and read as follows:

> "Section 1. Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays:
>
> New Year's Day
> Washington's Birthday
> Decoration Day
> Fourth of July.
> Labor Day
> Thanksgiving Day
> Christmas

"Section 3. A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday." (Underlines added)

"Section 7. (a) When any of the seven recognized holidays enumerated in Section 1 of this Article II, or any day which by agreement, or by law or proclamation of the State or Nation, has been sutstituted or is observed in place of any of such holidays, falls during an hourly or daily rated employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for therein provided he meets the qualification requirements specified. The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes." (Underlines added)

The qualifying provisions which govern this dispute are set out in the underlined portions of Sections 3 and 7 of Article II. Under these provisions an employee must have compensation credited to the workdays immediately preceding and following his vacation, in order to qualify for holiday pay for a holiday which falls within his vacation period. The parties appear to agree on this general statement of the rule; they also agree that the pertinent days under the rule, as applied here, are the work days of December 10, 1971 and January 3, 1972. The Claimant performed service on January 3, so the Carrier's argument does not bring the compensation paid for this day into question. Consequently, the issue centers on the compensation credited to Claimant for his workday of December 10, 1971.

In its initial denial of the claim on the property, the Carrier stated in a February 1, 1972 letter that:

"W. S. Williams last worked in 1971 on October 25. The fact that he was paid for vacation from December 13 to December 31 does not qualify him for either of the holidays."

However, at a later stage of handling the Carrier admitted that Claimant received pay for December 10, but the Carrier contended in a February 29, 1972 letter that:

> "... this pay was for an on the job injury sustained by Mr. Williams, and was not paid for any service compensated for on the day immediately preceding the vacation as is stipulated within the Holiday Agreement."

The issue is thus narrowed to whether compensation for an on-the-job injury, credited to Claimant's workday of December 10, qualified Claimant for the two claimed days of holiday pay; or, whether such compensation should not be treated as compensation for purposes of the holiday pay rule, as Carrier contends, because such compensation was not paid for services performed. We believe the plain language of the holiday pay rule resolves this issue in Claimant's favor, and that the compensation credited on December 10, 1971 qualified him for the claimed holiday pay. More specifically, the only compensation excluded from the rule is that which is expressly covered by the note to Section 3. This note reads as follows:

> "Compensation paid under sickleave rules or practices will not be considered as compensation for the purposes of this rule."

Compensation for an on-the-job injury does not come within the purview of this note, and we do not find any language elsewhere in the rule which might conceivably be read as excluding such compensation from the qualification provisions of the rule. Moreover, in commenting on the identical sickleave exception in Award 15467 (Lynch), this Board stated:

> "It is an accepted practice in interpreting rules of a collective agreement that where the parties, as here, clearly make an exception and only one exception (compensation paid under sick leave rules), no other exception may be inferred."

For other Awards which harmonize with this comment on the sickleave exception, see Awards 14501 (Dorsey), 14816 (Dugan), and 18261 (Dolnick).

In conclusion we note that the Awards cited by the Carrier are not apropos to the instant dispute. In Awards 11642 (Dorsey) and 11672 (Rinehart), the Claimants did not have compensation credited to their workdays immediately following the holiday. In the Award of Special Board of Adjustment No. 765 (Cluster), the Claimant did not work due to sickness on the day immediately preceding his vacation. No sickness is involved in this dispute, and the Claimant received compensation for service performed on his workday immediately following the holiday.

We find no reason to depart from these Awards and we shall therefore sustain the claim.

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 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1974.