

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22086
Docket Number CL-21866

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(Consolidated Rail Corporation
((Former Central Railroad Company of New Jersey)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8236) that:

1. Carrier violated Article 26 - Holiday Pay - of the TC Agreement when it failed to compensate regular assigned Towerman W. R. Stefanski Holiday Pay for July 4, 1975, and that

2. Claimant W. R. Stefanski be compensated for holiday pay at 8 hours pro-rata rate of his position at Bank Tower.

OPINION OF BOARD: Claimant regularly worked as a Towerman, an hourly-rated position, under an Agreement entitling him to eight hours pay for each holiday for which he is eligible.

In the period in question, he worked a Monday-Friday schedule, with Saturdays and Sundays as rest days. He worked as Towerman on Monday through Wednesday, June 30 - July 2; then accepted assignment as Train Dispatcher on Thursday through Monday, July 3 - 7 (including work on July 4, a holiday) and returned to his Towerman position on July 8.

Applicable portions of the Agreement are as follows:

"Article 26 - Holiday Pay

(a) Subject to the qualifying requirements applicable to regularly assigned Employees contained in paragraph (b) hereof, each regularly assigned hourly and daily-rated Employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual Employee: . . .

"(b) A regularly assigned Employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid him by the Carrier is credited to the workdays immediately preceding and following each holiday or if the Employee is not assigned to work but is available for service on such days. . . ."

There is no dispute that Claimant was properly relieved of his Towerman position to accept assignment for July 3 - 7 as Train Dispatcher, a monthly-rated position under a different Agreement. The Carrier is nevertheless the employer in both instances.

Previous awards have settled the question that, as long as the Carrier is the employer, the type of work performed by the employee does not affect his eligibility for holiday pay. Award No. 20725 (Lieberman) states in part:

"The same issue has been before this Board on a number of occasions. In Awards 11317, 16457 and 18261 telegraphers who also worked as extra dispatchers were involved, just as in the instant case. In Award 18261 we said:

'The effect of these decisions is that the rule makes no qualifications with respect to the source of the compensation paid by the Carrier and credited to the employees' regular work days immediately preceding and following the holiday. And since only one exception - that with respect to sick leave payments - is expressed, no other or further exceptions may be implied. Such decisions cannot be characterized as palpably erroneous; therefore they provide valid precedent.'

In this dispute, we shall reaffirm the principle that any compensation received by employees, regardless of source (except sick leave payments), is sufficient to qualify for holiday pay under the compensation test of the Agreement cited supra. For this reason, the Claim must be sustained."

Thus the sole issue remaining is the Carrier's contention that the Claimant is ineligible for holiday pay under the Agreement covering Towermen, since his pay as Train Dispatcher is on a monthly basis designed to include holiday pay. Such position finds some support in Award No. 19632 (Brent), although in that case the facts show that the temporary assignment to a monthly-rated position was for a more extended period.

The Board finds that the theory of monthly pay inclusive of an additional amount for holidays (as contrasted with payment of eight hours' pay for holidays as under agreements for hourly-rated employees) does not apply, when subject to full analysis. First, as pointed out by the Organization, employees temporarily assigned to monthly-rated positions do not receive a monthly rate, but rather such position is, according to formula, converted back to an hourly rate for purposes of paying the temporarily assigned employee. Second, the analogy is incomplete. Assume, for example, the existence of eight paid holidays per year. This means that pay for a single holiday, if included in the monthly rate, requires the earning of a month and a half pay. (Assume 12 paid holidays, and it takes a full month to earn pay for a single holiday.) Thus, the employee who is placed on a monthly rated job for five days -- regardless of what divisor is used to arrive at an equivalent rate -- comes nowhere near approximating holiday pay under the monthly-rated agreement. He is getting little or no "bonus." And, as an employee continuously employed by the Carrier before and after the holiday at issue, there is no agreement rule or logical theory to deny his holiday pay.

The Board thus carries forward one step the conclusions reached in Award No. 21848 (Mead), in which the employee was found to be eligible for holiday pay under his regular assignment. We now state that brief service on a monthly-rated position on and/or immediately surrounding a holiday does not, for the reasons advanced above, constitute double or "bonus" payment under two agreements. This finding is not intended to affect previous awards which can be distinguished because the employee has completed his assignment to a position prior to a holiday or, alternately, is assigned to another position for an extended period of time surrounding the holiday.

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;

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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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.

