

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22198
Docket Number CL-21917

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8268, that:

(1) Carrier violated the effective Agreement when it failed to compensate Telegrapher D. J. Herzog, holiday pay for Labor Day, September 1, 1975.

(2) Claimant D. J. Herzog shall now be compensated for holiday pay at pro rata rate as Telegrapher, Enderlin, North Dakota; the last position worked as Telegrapher before the holiday.

OPINION OF BOARD: At all times pertinent to this case, Claimant was regularly assigned as a telegrapher at Enderlin, North Dakota. During the period August 18 through September 4, 1975, Claimant performed service for Carrier as an extra train dispatcher and did not work his regular assignment.

Nothing in the parties' agreement removed Claimant from the provisions of the National Holiday Agreement which distinguishes between "regularly assigned hourly and daily rated" employees and "other than regularly assigned employees."

As a "regularly assigned employee," Claimant was due holiday pay for the September 1, 1975 holiday providing he met the qualifications therefor. As provided in Section 3 of the National Agreement, Claimant qualified "if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday."

Claimant unquestionably had compensation paid him by the Carrier on the relevant workdays. Carrier contends, however, that the compensation was earned as an extra train dispatcher and that, inasmuch as Claimant did not work under the Telegrapher's Agreement on either the workday immediately preceding or following the holiday, the Telegrapher's Agreement (and holiday provisions) does not apply. X-1

Carrier also contends that the Memorandum of Agreement of January 18, 1965, reading:

"It is hereby agreed that Section (i) of Rule 24, which became effective January 15, 1963, is amended by the elimination of its second sentence. The revised section will read as follows:

(i) Telegraphers temporarily filling positions outside the scope of this agreement will be considered to have vacated their regular position and will not be permitted to return to their regular position until they have completed their temporary assignment.

"This agreement does not modify or in any manner affect schedule rules or agreement except as specifically provided herein."

means that Claimant, while performing service as an extra train dispatcher, is no longer covered by (at least) the holiday provisions of the Telegraphers' Agreement.

As to the first contention, Third Division Award 20725 (Lieberman) answers same where it 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:

X-2
'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.'

X-2

"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."

As to the January 18, 1965 Agreement, Carrier's contention does not overcome the logic of Third Division Awards 20725 and 22086.

We find nothing irregular in the handling on the property and will sustain the claim as presented.

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 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:


Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.