

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22310  
Docket Number CL-22155

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and  
                              { Steamship Clerks, Freight Handlers,  
                              { Express and Station Employees  
                              { Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8422) that:

(1) Bureau violated Memorandum Agreement dated July 11, 1973, National Holiday Agreement, Rule 38(b) and other related rules of the Agreement when it failed to properly compensate Mr. B. D. Hazelwood for work performed on a legal holiday.

(2) Bureau shall now compensate Mr. Hazelwood for eight (8) hours at the rate of time and one half.

OPINION OF BOARD: In the spring of 1973 Claimant, working as an Inspector, position No. 27, was assigned exclusively to inspection work for the T & P Railway at Dallas, Texas. Pursuant to his request, the Organization and the Carrier entered into an agreement to exchange the normal Good Friday Holiday, provided in the Agreement, for the day after Thanksgiving in order to be consistent with the practice on the T & P Railway. That Agreement provided:

"We are in receipt of a request from employee B. D. Hazelwood, occupying Position No. 27, titled 'Inspector', located at Dallas, Texas, presently assigned exclusively to perform inspection work for the T&P Railway, to change Good Friday, a recognized holiday under the provisions of the February 25, 1971 Agreement, to the Friday after the Thanksgiving Day Holiday.

The reason behind this request is that the T&P Railroad has signed an Agreement with BRAC to make a similar change of holidays. As Mr. B. D. Hazelwood performs work exclusively for the T&P Railroad, we feel that his change is justified and is in the best interests of the employee as well as this Bureau.

"If this change meets with your approval, it will be effective January 1, 1974 and will apply only to Mr. B. D. Hazelwood, assigned to Position No. 27, located at Dallas, Texas. This letter of understanding will not set a precedent and will be in effect only as long as Mr. B. D. Hazelwood occupies this position at this location and Good Friday is recognized as a holiday under the provisions of the February 25, 1971 Agreement, as amended."

That Agreement, dated July 11, 1973 was signed by both parties. By letter dated August 28, 1973 the understanding was transmitted to Carrier official in Chicago with the following language appearing:

"It is fully understood that Mr. B. D. Hazelwood will observe the Friday after Thanksgiving in place of Good Friday as a recognized legal holiday, effective with the calendar year of 1974 and this will apply to Mr. Hazelwood only as long as he is assigned to Position No. 27, Inspector, located at Dallas, Texas."

Claimant bid on Position No. 7 at Fort Worth, Texas and was assigned to that position on May 23, 1975. Thus, Claimant did not get Good Friday as a holiday in 1975. Further, Claimant worked on the day after Thanksgiving that year and was not paid holiday pay for that day either, triggering the Claim herein.

Carrier first argues that the Claim was not timely filed, since it should have been filed within 60 days from May 23, 1975. We do not agree. Claimant was unaware of the omission of holiday pay until after the Thanksgiving holiday and hence the Claim, filed December 23, 1975, was timely.

The Organization takes the position that Claimant should not be denied nine holidays per year as provided by the National Holiday Agreement merely because he moved from one position to another. Carrier argues that the Letter of Understanding and the Day after Thanksgiving Holiday was only applicable as long as Claimant occupied Position No. 27 and when he left the Agreement automatically terminated.

It must be observed that the holiday exchange was initiated at Claimant's suggestion and further that his changed status in moving from Position No. 27 was also at his volition. It is clear that in bidding on the new position Claimant undertook to accept all the terms and conditions of that job, including its holidays.

While the Board recognizes the equitable request implicit in this Claim, equity is not within our purview in dealing with Rules disputes such as this; we may only interpret the agreement of the parties as literally as possible. When Claimant was awarded the new position on May 23, 1975, the letter of Understanding dated July 11, 1973 by its explicit terms, became inapplicable. That Agreement was only applicable "as long as Mr. B. D. Hazelwood occupies this position at this location." Since the Board has no authority to remake agreements when conditions have changed, or otherwise, the Claim has no basis in the rules and must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.