

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22634
Docket Number CL-22445

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8534) that:

(a) The Carrier violated the Clerical Agreement when they did not properly pay R. H. Powers during the month of December, 1974.

(b) The Carrier should now recompute R. H. Powers' pay for December, 1974 and allow him \$58.70 in addition to any other pay due him for this period.

OPINION OF BOARD: The Claimant requested ten (10) vacation days in December of 1974. Carrier granted those days and also included December 25 as one of the vacation days.

In support of his claim, the Employee cites Sections 3 and 4 of a September 1, 1949 Agreement:

"3 - The monthly rate of an employee will be compensation for eight hours or less per day (as assigned by bulletin) for the number of working days in a month. A month shall be the number of days therein less rest days and the holidays specified in Rule 39(b) or the days to be observed as holidays in lieu of holidays.

4 - Regularly assigned employees hereunder will receive for each semi-monthly pay period the fractional part of the working days in the particular calendar month. For example, in a calendar month containing 21 working days an employee would receive 10/21 of the monthly rate for the pay period having ten working days, and 11/21 of the monthly rate for the pay period having eleven working days."

Because December, 1974 had 21 working days (exclusive of rest days and holidays), the Claimant urges that he was entitled to 1/21st of his monthly rate per work and vacation days - i.e., \$58.699 per day, and the same pay for Christmas Day.

Carrier submits that proper compensation was made and that no adjustment is due.

We do not concur with Carrier that the original claim was "changed and expanded." It was essentially the same and the Organization complied with the intent of the rule. Thus, we will consider the case on its merits. In essence, Carrier defends its position on the proposition that the Claimant holds a monthly rated position and payment for holidays is incorporated in the monthly rate and he received the precise amount due if he had worked the entire month (and not taken vacation). Thus, Carrier asserts that Claimant has failed to show any rule violation.

We have reviewed this rather extensive record at length, and we have considered the various contentions and assertions regarding history of the problem, practice, etc., and we have reviewed the cited Awards.

It may very well be - and we make no ruling thereon - that on some other property, this Claimant's compensation for the claim period would have been computed precisely and correctly if done as was the case here. But here, we continue to return to that portion of the parties' unique rule which appears to us to create a formula basis for payment and there may very well be a monthly fluctuation.

Again, we emphasize that this Award speaks only to this claim concerning the rule before us in this dispute.

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;

Award Number 22634
Docket Number CL-22445

Page 3

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: *G. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.