

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22946
Docket Number CL-22632

Richard R. Kasher, Referee

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

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(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8608)
that:

1. The Carrier violated the Agreement(s) when it failed and refused to allow Clerk-Operator R. L. Hughes, Rockport, Florida, eight (8) hours straight time, holiday pay, February 21, 1977.

2. Account this violation, Carrier shall compensate Claimant \$52.18, which is the Rockport, Florida, Clerk-Operator's straight time daily rate. This payment is in addition to the eight (8) hours, time and one-half payment that has been allowed Claimant for time actually worked on this holiday.

OPINION OF BOARD: Claimant, R. L. Hughes, is a regularly assigned Clerk-Operator on the third trick at Rockport, Florida. He also works, when needed, as an extra Train-Dispatcher on the Tampa Division. On February 20, 1977 Claimant worked as a Train-Dispatcher at Mulberry, Florida. On February 21, 1977, a holiday, he worked his regular Clerk-Operator assignment at Rockport. On Saturday, February 22, 1977 he again worked as a Dispatcher. Mr. Hughes filed a time card claiming eight hours' holiday pay plus eight hours at the overtime rate for work performed on the holiday. The Carrier denied the claim because Mr. Hughes did not perform clerical work on the qualifying days for a holiday, as stipulated in the Clerks' Agreement, Rule 26-Holidays.

The Organization argued that the Carrier violated Rule 43-2(a)-Promoted to Excepted, Subordinate Official or Official Positions and Training Employees for Promotion to Position of Train Dispatcher, and Rule 26, Section 1(d)-Holidays, which read as follows:

"RULE 43 - Promoted to Excepted, Subordinate Official or
Official Positions and Training Employees for
Promotion to Position of Train Dispatcher

"2 (a) Employees who are under temporary promotion to the positions of Yardmaster and Train Dispatcher will not be permitted to return to their assignments after having worked five (5) consecutive days as Yardmaster or Train Dispatcher, if it is definitely known that there is work in sight as Yardmaster or Dispatcher on the eighth (8th) day. However, it will be permissible to return to their assignments on the sixth (6th) day, if it is not known that their services will be needed as Yardmaster or Train Dispatcher on the eighth (8th) day."

"RULE 26 - Holidays

Section 1, reading in part as follows:

"(d) 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 work days immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days."

The claim must be denied. Clerks and Dispatchers work under separate Agreements. Rule 26 of the Clerks' Agreement had its origin in the National Agreement of August 21, 1954 and Dispatchers were not covered by that Agreement. The A.T.D.A. has negotiated its own method of compensation for holidays - payment is incorporated into their monthly rate and is spread over the entire year, rather than receiving it on the day that the holiday occurs, as is the situation for Clerks under Rule 26.

Claimant cannot be compensated under two agreements. Claimant has acquired status under two agreements, but his status under the Dispatchers' Agreement cannot be given any effect upon his status under the Clerks' Agreement because he worked the days immediately preceding and succeeding the holiday as a dispatcher.

Even if we were to consider, as relevant in the claim before us, arguments regarding preponderance of service, in the instant case Claimant worked preponderantly in the months prior to the claim date as a dispatcher. He cannot show preponderant service under the clerical agreement and thus sustain the argument that he is entitled to holiday pay under that agreement.

Finally, similar claims on this property (Award Nos. 44 and 56 of Public Law Board No. 1366) have denied claims of a similar nature.

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. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.

LABOR MEMBER'S DISSENT
TO
AWARD 22946, DOCKET CL-22632
(Referee Kasher)

Award 22946 is in error. The majority has ignored a long line of decisions that have held that compensation received as a Train Dispatcher on the day before and the day after a holiday qualify a telegrapher temporarily working as a train dispatcher for holiday pay under the Clerks' Holiday Agreement. See Awards 11317 (Moore), 11551 (Webster), 11977 (Kane), 14501 (Dorsey), 15685 (Dorsey), 16457 (Mesigh), 16596 (McGovern), 18261 (Dolnick), 18953 (Rubenstein), 20585 (Lieberman), 20725 (Lieberman), 22086 (Marx), 22198 (Marx) and 21848 (Mead), of this Division. A number of Special and Public Law Boards have also concluded that the Holiday Pay Agreement was carefully drawn so as not to disqualify an employee for holiday pay because the compensation earned in the qualifying period resulted from service accruing from the application of dual seniority. See SBA 122, Award 37 (Gilden), SBA 192, Award 82 (Robertson), PLB 274, Award 298 (Ritter), PLB 352, Award 9 (Weston), PLB 713, Award 34 (Dolnick) and PLB 713, Award 38 (Dolnick).

The majority erred and dissent is required.


J. C. Fletcher, Labor Member