

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22979
Docket Number MW-22847

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the provision of the National Holiday Agreement when it refused to allow Larry Whitaker 8 hours regular straight-time pay for the Christmas Eve holiday and 8 hours regular straight-time pay for the Christmas Day holiday of 1977. (System File D-1-78/MW-9-78)

(2) Claimant Larry Whitaker be allowed the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim."

OPINION OF BOARD: From December 19, 1977 through December 31, 1977 claimant replaced the foreman regularly assigned to the Cotopaxi Section and was paid at the foreman's rate of pay. Claimant is demanding the Holiday pay he would have been entitled to without question had he continued in service as a Section Laborer and been compensated as such.

The holiday pay for the foreman position is computed in the monthly rate and those sections of the National Holiday Agreement relating to hourly rated employees is not applicable to the foreman position.

This issue has arisen many times with some conflicting results. Many of those cases arose when telegraphers worked as dispatchers for a period of time encompassing a holiday. The issue however remains the same. Is the claimant entitled to selectively apply the provisions of an agreement under which he holds seniority even though not working under that agreement? We think not. Award No. 16457 before the Third Division cited with approval in Award No. 19632 correctly sets out the applicable interpretation:

"....Foremen covered by their effective agreement do not receive any pay for holidays as such. It is clear that these claimants were 'regularly assigned' to the Foreman's position both before and after a holiday and were under the Foreman's Agreement which did not provide for holiday pay. Such findings by the Second Division would necessarily hold true in the instant dispute if claimant had not been released from his 'regular assignment' as an extra train dispatcher December 31, 1963.

"In our opinion, the Second and Third Division Awards relied upon by the parties have in fact established that an employee may not circumvent or misconstrue to his own benefit the intent and language of each respective agreement. He may not attempt to obtain bonus benefits in the form of holiday payments just because he retains position and seniority rights under one agreement while performing under the other. Said holiday payment is determinable by his release from the 'regular assignment' under the one agreement and his reversion to his 'regular assignment' under the other."

We are unable to find contractual support for the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.