

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23831
Docket Number SG-23808

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
 { Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.:

On behalf of Signal Maintainer A. W. Cunningham for eight (8) hours holiday pay he was denied on Good Friday, April 13, 1979."

(General Chairman file: SR-121) (Carrier file: 56-405)

OPINION OF BOARD: Claimant A. W. Cunningham is a Signalman, headquartered in Monroe, Virginia. He is a regularly assigned employee who works the day shift, Monday through Friday. His rest days fall on Saturday and Sunday. Claimant is required to be available for call on every other weekend.

During the week of April 8 to April 14, 1979, Claimant worked Monday, April 9, Tuesday, April 10, Wednesday, April 11 and Thursday, April 12. Friday, April 13, was Good Friday, a paid holiday under Article II, Section 1, of the National Holiday Agreement. Claimant did not work the holiday, but was rather on standby. Claimant was also on standby on Saturday and Sunday, April 14 and 15. He was paid four hours of pay at the pro rata rate in accordance with Rule 37, Section e, for each of these days.

Claimant did not work on Monday, April 16, since he was scheduled for dental surgery. He notified his supervisor of this absence in the proper manner. (The reasons for Claimant's absence on April 16 or his right to be absent are not at issue here.) When submitting his time sheets, Claimant included eight hours for the Good Friday holiday. Carrier denied Claimant's pay for the holiday, since he did not work on Monday, April 16.

A claim was filed protesting Carrier's denial of the holiday pay. The claim was handled in the usual manner on the property, denied at each step of the grievance procedure, and eventually submitted to this Board for resolution.

Carrier argues simply that Article II, Section 3, of the National Holiday Agreement requires that a regularly assigned employee works the regularly scheduled work day before the holiday and the regularly scheduled work day after the holiday to receive holiday pay. In the instant case, that regularly scheduled work day after the holiday was Monday, April 16. Claimant did not work April 16. He was off for surgery; therefore, he does not qualify under Article II, Section 3, for holiday pay. Carrier further argues that even though Claimant was on standby on April 14 and 15, and was paid 4 hours each day, these days are Claimant's regularly assigned rest days and they cannot be considered as work days to meet the requirements of Section 3.

The Organization argues that Claimant was on standby, subject to call on April 14 and 15. He was not free to do whatever he wanted to do. He had to make himself available on a 24-hour basis for those two days. He was paid for this standby service and he was not free from duty. He was in effect assigned to be available on those two days. They must be considered to be assigned work days. They cannot be considered rest days. Having stood by on Saturday, April 14 and Sunday, April 15, and having been paid for the two days, Claimant met the compensation requirements of Article II, Section 3, of the National Holiday Agreement. He therefore should be paid. Article II, Section 3 reads as follows:

"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 workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday."

The issue before this Board is: Does being held on call and being paid for that standby status on a scheduled rest day change that rest day to a work day? If so, does such a work day (and the compensation received for it) satisfy the requirements of Article II, Section 3, wherein a regularly assigned employee must work on the work days before and after the holiday in order to receive pay for the holiday?

This Board has engaged in extensive discussion of this case and we find the logic of Carrier's arguments in this situation to be sound.

Claimant is a regularly assigned maintainer. His work week is Monday through Friday, with Saturday and Sunday as rest days. Every other weekend, these rest days are classified as standby days or days subject to call, to use the words of Rule 37(c) of the Schedule Agreement.

Since Claimant is a regularly scheduled employee, he is covered by Article II, Section 3, of the National Holiday Agreement and he must meet two tests in order to be qualified for holiday pay. He must receive pay from Carrier on the work day before and after a holiday and these work days must be Claimant's regularly scheduled work days. Article II, Section 3, clearly specifies these two requirements. It also defines for the parties how they should apply this rule if the holiday falls on the last day or the first day of an employee's workweek. If it falls on the last day of an employee's workweek (as is the situation in this case), the first work day following the holiday shall be the first work day following the employee's rest days. In the case of a regularly assigned employee with a Monday-to-Friday workweek, when the holiday falls on a Friday, the next work day is Monday.

In the instant case, Claimant did not work on Monday; therefore, he does not qualify for holiday pay for a holiday that fell on the previous Friday. While Claimant was on standby status on the Saturday and Sunday following the holiday and received compensation for that status, these days were not regular work days, as that term is applied in this industry.

Claimant has a five-day job, with Saturday and Sunday as rest days. Every other weekend, he stands by on his rest days and is paid four hours at the pro rata rate for that availability. Agreeing to be available on an as-needed basis on one's rest days does not change that rest day to a regularly assigned work day. Claimant did not have compensation credited to his first regular work day after the holiday, Monday, April 16, 1979; consequently, he does not qualify for holiday pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

