

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24710
Docket Number CL-24679

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9649)
that:

(1) The Carrier violated the current National Vacation and Holiday Agreements, when it refused to properly compensate Traffic Control Center Train Director, Mr. R. E. Laier for the Good Friday Holiday, April 17, 1981, while off on vacation and the holiday occurring on a work day of his work week and his position was required to be worked on the holiday.

(2) The Carrier shall now compensate Mr. R. E. Laier for eight (8) hours pay at the time and one-half rate of his regularly assigned position in addition to the amount he has already received.

(3) That the Carrier be required to pay ten (10) percent interest compounded annually on the eight (8) hours pay until claimant is made whole.

OPINION OF BOARD: At the time this dispute arose, Claimant, R. E. Laier, was regularly assigned to a Train Director position at Carrier's Traffic Control Center, Wednesday through Sunday with rest days of Monday and Tuesday. Claimant was on Vacation for the period April 15, 1981 through April 19, 1981, including the Good Friday Holiday, Friday, April 17, 1981. Claimant was compensated one straight-time day for his vacation and an additional straight-time day for the holiday. The Organization contends, however, that Claimant should also be paid an additional eight hours at the time and one-half rate. This extra compensation is mandated under applicable sections of the National Holiday and Vacation Agreements since, in the Organization's view, Claimant's position was worked on the holiday. As the Organization sees it, Extra Towerman Cline worked Claimant's position for the entire week he was on vacation, including the Good Friday Holiday. Thus, the Organization concludes that Claimant is entitled to eight hours pay at the time and one-half rate for that day, plus ten per cent interest.

Carrier, however, denies that Extra Towerman Cline worked Claimant's position on Good Friday. According to Carrier, Claimant's position was not worked on that day. Instead, Carrier insists it blanked Claimant Laier's position that day. Further, Carrier asserts Extra Towerman Cline filled R. E. Olson's position on Good Friday, rather than Claimant's. Thus, Carrier concludes that Claimant's position was not worked on Good Friday, April 17, 1981. Accordingly, Carrier asks that the claim be rejected.

The sole issue before us is whether on Friday, April 17, 1981, Extra Towerman Cline worked Claimant's position, as the Organization contends, or the position of R. E. Olson, as Carrier maintains. If Extra Towerman Cline worked Claimant's position, then the Organization must prevail, for that would bring this case within the facts of sustaining Award No. 1, Public Law Board No. 2501, decided on this very property.

After a careful review of the record evidence, we are convinced that Claimant's position was, in fact, worked by Extra Towerman Cline on Good Friday. There are several reasons which lead us to this conclusion.

First, the record reveals that Cline was assigned to work the Claimant's five vacation days (see Carrier's Extra Board for the Traffic Control Center, Employees Exhibit No. 7). Carrier argued that the form was filled in by unauthorized extra men, presumably Towerman Cline. However, there exists no reason to discredit Cline's notation. Claimant was on vacation for the week of April 15 to April 19, 1981 and Cline was assigned to that position.

Second, we note that a Train Director junior to Claimant worked on the same holiday shift as Claimant's. If, as Carrier contends, Claimant's position was blanked on Good Friday, then the Junior Train Director should have been on lay off on that day as well. However, he was not on lay off. Thus, we must conclude that in fact, Claimant's position was not blanked on Good Friday and that Extra Towerman Cline filled that position on the holiday.

Having sustained the Organization's contentions here, we turn to the issue of an appropriate remedy. While Claimant is entitled to an additional eight hours' pay at the time and one-half rate, he is not entitled to any interest. The preponderance of decisions indicate that interest is not required to make the Claimant whole for losses suffered (See, for example, Third Division Awards Nos. 20014, 18464, 18633). Here, the parties did not contract for interest as part of any remedy. Therefore, for this Board to award interest would be to create new Agreement rules. This we may not do. Accordingly, the Organization's request for interest is denied. In all other respects, however, the claim is sustained.

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 violated.

A W A R D

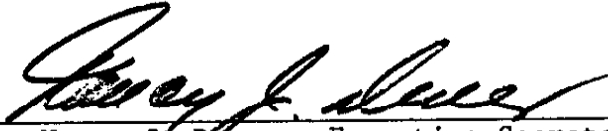
Claim sustained in accordance with the Opinion.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.