

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24936
Docket Number MS-25120

Marty E. Zusman, Referee

(Keith L. Salzman

PARTIES TO DISPUTE:

(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "This claim is based on the question whether I should receive holiday pay for December 24th and 25th, 1980, and January 1, 1981, pursuant to Appendix D of the Schedule of Rules, governing Hours of Service, Rates of Pay and Working conditions of Employees in the Maintenance of Way Department, dated September 1, 1967, and also pursuant to Appendix A of the Schedule of Rules, Governing Hours of Service, Rates of Pay and Working Conditions of Employees in the Maintenance of Way Department, dated December 1, 1982. Both Appendix D and Appendix A shall hereinafter be referred to as the National Holiday Pay Rule.

I am claiming payment from the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company in the amount of \$181.01 (three days pay @ \$7.542 per hour, eight hours each day).

I do not request an oral hearing."

OPINION OF BOARD: This is a wage dispute in which Claimant Keith Salzman who was employed by the Carrier for 122 days from July 16, 1980, including 13 of the 30 days prior to January 1, 1981 until his employment ended on December 17, 1980, maintains he was denied by the Carrier his holiday pay for December 24, 25, 1980 and January 1, 1981 as required by the Memorandum of the National Holiday Pay Rule. This Rule reads in pertinent part as follows:

"Subject to the qualifying requirements applicable to other than regularly assigned employees contained in Section 3 hereof, all others who have been employed on hourly or daily rated positions shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him for each of the above-identified holidays if the holiday falls on a work day of the work week as defined in Section 6 hereof, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment."

Other pertinent sections alluded to above include Section 3 which reads in pertinent part for "other than regularly assigned employees":

"All others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service."

The issue in this case is whether Claimant was, in fact, an "employee" of the Carrier and as such was entitled under the National Holiday Pay Rule for compensation. Claimant Salzman maintains in the record as handled on property that he was laid off, a union member in good standing and as such deserving both vacation and holiday pay under the contract and having received his vacation pay is now at impasse over Carrier refusal for compensation for holiday pay.

In the mind of this Board after a thorough review of the controlling agreement and the record as handled on property the Claimant was not in the first case laid off by normal furlough wherein his employee status would have been maintained. The Board can find nothing in the Memorandum of National Holiday Pay Rule of any Section, which, taken in its entirety indicates that the Claimant would be or should be considered an "other than regularly assigned employee." A careful reading of the controlling sections indicate that the intent of the Holiday Pay Rule is to compensate employees, defined as those whose "employment was not terminated prior to the holiday by resignation, for cause ..." and who if "other than regularly assigned employee" is "available for service".

This Board firmly holds that Claimant was not an "employee" as defined and as intended in the Holiday Pay Rule. He was employed on a temporary basis for seasonal work and at the completion of the project his position was abolished. He was not "laid off" as defined and understood in terms of the controlling agreement as he did not retain any seniority and therefore had no mutually reciprocal relationship with the Carrier. The Vacation agreement simply provides earned benefits for days worked. The Holiday Pay Rule requires among other things that there be continued service with the Carrier either through continuous employment or through normal furlough which requires the employee to be available for service as Carrier needs develop. Claimant was clearly not furloughed or in any manner retaining employment status.

The Board finds that the Claimant earned no seniority rights, was neither an employee nor considered an "other than regularly assigned employee" entitled to pay under the National Holiday Pay Rule. It is the determination of this Board that the Claimant's employee status terminated prior to these Holidays and it is clearly not the intent of the Rule to pay holiday pay for non-employees. Absent, therefore, evidence that the actions of the Carrier were inconsistent with the controlling rule, this Board finds no merit in the claim presented before it.

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

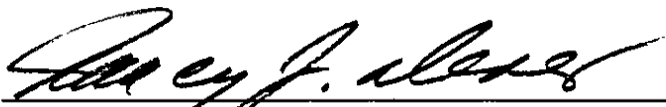
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1984.