

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24968
Docket Number SG-25094

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on The Long Island Rail Road:

Claim No. 1, Case SG-4-82

On behalf of Steven Borakowski for one hour's pro rata pay under Rule 67 account working off his section December 26, 1981.

Claim No. 2, Case SG-5-82

On behalf of Joseph Pomilla for one hour's pro rata pay under Rule 67 account working off his section December 25, 1981.

OPINION OF BOARD: This is a contract interpretation dispute initiated on February 22, 1982 by the Organization on behalf of Signal Maintainer Steven Borakowski and in a separate, but directly related case on behalf of Signal Maintainer Joseph Pomilla. The record before the Board shows that these two (2) separate claims handled on property are herein treated under one (1) Docket number and are in all pertinent respects similar. These claims involve the language and meaning of Rule 67 which reads as follows:

"Rule 67. Temporary Assignment To Two or More Sections, Maintainer

When a maintainer during his regular hours works on two or more sections, his compensation for his regular tour of duty on that day shall include an additional allowance for one hour's pay at his regular rate."

In the instant case, both claims brought before this Board involve claimants who worked on a day of the week which was compensated under holiday pay rules, but also, in addition to being compensated as a holiday (Christmas), occurred during the employee's standard work week and within their normally assigned hours. In the mind of this Board the central issue at bar to interpretation of Rule 67 is whether or not a holiday falling during a normally assigned workday and work week negates Rule 67 whereby employees cannot be considered on their "regular hours" or within their "regular tour of duty." If they are not on their "regular" hours and tour of duty then Rule 67 does not apply and the claim must be denied. If they are on their "regular" hours and tour of duty when the holiday just happens to fall then the claim must be sustained. Whether denied or sustained, discrepancies and additions found in the record between the materials and lines of arguments presented on property and those presented to this Board in ex parte submissions by either party have been dealt with here, by treating the latter as inadmissible.

This Board notes that the interpretation of contract language is at the core of this dispute. It is not within the province of this Board to go outside the language of the agreement when it is clear from the language the intent of the parties. In the case at bar the Carrier has declined the claim based upon the holiday compensation paid and states in a letter dated September 22, 1982 that "Rule 67 is redundant with respect to 'regular' conditions, since Claimants were in a holiday status, their service on the date of the claim was not performed under 'regular' conditions."

In the instant case the language of Rule 67 is ambiguous in the mind of this Board as to the intent of the Rule. It is clear that such Rule could have been written without the evident emphasis upon "regular" and as such the importance of the word is duly noted. It is not the province of this Board to add language to an agreement. The latent ambiguity in the present language of Rule 67 makes it possible for more than one reasonable interpretation of this Rule. In the absence of clear and undeniable past practice to give meaning to ambiguous language in situations such as the instant case, then what one said or didn't say establishes language interpretation. In this case the repetition of "regular" in excess of its need is seen in the mind of this Board as intended, and the absence of including language about holidays as unnecessary, since a complete and thorough reading of the rules governing holiday status indicates its applicability must be interpreted as to compensation for other than "regular" conditions. As such, this Board firmly holds that the work of claimants on their normally assigned hours within their standard work week, but for which they receive compensation under the holiday rule and are technically working on a holiday for holiday pay, cannot be considered "regular" within the intent of Rule 67. After a complete and thorough review of the record as handled on property, this Board denies the claim as Claimants were not on their "regular" hours and "regular" tour of duty.

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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 14th day of August 1984.