

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25078
Docket Number MW-25104

Edward L. Suntrup, Referee

PARITES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it failed and refused to allow Trackman R. W. Loftin holiday pay for Washington's Birthday (February 15, 1982) (System File B-2062/MWC 82-6-9B).

(2) The claimant shall be allowed eight (8) hours of pay at the trackman's straight time rate because of the violation referred to in Part (1) above."

OPINION OF BOARD: The instant case centers on a pay claim filed by the Organization on behalf of the Claimant on March 4, 1982. The claim alleges that the Carrier was in violation of Section 3 of Appendix Item No. 3 of the August 1, 1975 Agreement because it did not give holiday pay to the Claimant for February 15, 1982 which is Washington's Birthday. The Agreement provision at bar states that a regularly assigned employee shall qualify for holiday pay 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."

A review of the record shows that the Claimant did work on the day preceding the holiday in question but that he did not do so on the work day immediately following Washington's Birthday because he was on disciplinary suspension for having been excessively absent from work without permission. The Organization's argument that the Claimant was, nevertheless, "available for work on this day" is rejected on the grounds that the Claimant had effectively disqualified himself for work on that day because of disciplinary infractions. Precedent for such conclusion can be found in the principle established in Public Law Board No. 86 (Award No. 19) and Public Law Board No. 610 (Award No. 5). In those Awards the Claimants were adjudged unavailable for service on the first work day after a holiday because they were obliged to attend the investigations related to alleged violation of Carrier rules. In the instant case the Claimant was unavailable because of a suspension which, according to the record, was neither disputed nor appealed by the Organization. In all three cases, the conclusion that the Claimants "... (were) neither available for nor did (they) perform any service" (PLB 610; Award 5) on one of the qualifying days obviates compensation for holiday pay under the Agreements at bar.

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.

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. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.