

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier failed and refused to compensate Track Inspector D. Demers for the seven (7) hours of track inspection work he performed on December 26, 1983 (System File 5-18-13-14-54/013-210-34).

(2) The Agreement was also violated when the Carrier failed to notify Mr. D. Demers, in writing, of the reason for the disallowance of the seven (7) hours of pay he claimed, in writing, for December 26, 1983, as stipulated in Rule 33(d).

(3) As a consequence of (1) and/or (2) above, Mr. D. Demers shall be allowed seven (7) hours of pay at his time and one-half rate for the track inspection work he performed on December 26, 1983."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was assigned to and was working the 7:00 a.m. until 2:30 p.m. shift as a Track Inspector on Monday, December 26, 1983. Based on the National Agreement, that date was recognized as the Christmas Day Holiday. Although there are various and sundry allegations and ramifications to this claim, all of which we have closely studied and given full consideration, the issue before the Board is whether the Claimant should receive seven (7) hours pay at his respective time and one-half overtime rate.

In pursuing its claim, the Organization mainly relies upon that portion of Rule 43(a) which reads:

"Employees required to perform work on the following Legal Holidays...Christmas... (provided that when any of the above Holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the Holiday) shall be compensated at the rate of time and one-half, as provided in Rule 35."

The Carrier, for its part, when denying the claim contended that Rule 34(a) is controlling here; it states:

"RULE 34. APPLICATION OF MONTHLY RATES
(a)...Monthly rates established for positions of System Tie and Rail Inspector and Track Inspector comprehend all service rendered six (6) days per week....Employees filling monthly rated positions comprehending all services rendered six (6) days per week shall be assigned one (1) regular rest day per week, Sunday if possible....Employees will not be required to work on the sixth day of their work week (Saturday) or on holidays except in cases of emergency or when conditions fully justify."

The Organization has argued with great skill, essentially contending that Rule 43(a) contains no exceptions. Had the parties desired to exclude certain categories or persons they would have done so in the Rule. Because this was not done, so the Rule should be applied as it reads.

The Organization's arguments are not without merit. However, applying the facts against the Rules in this instance, we agree with the Carrier, mainly for the following reasons:

- (a) The Claimant is a Track Inspector whose position is monthly rated based upon 213 hours. Positions in this category have holiday pay computed in the monthly salary.
- (b) The Rule specifically states that it comprehends "all services rendered six (6) days per week."
- (c) It was not disputed on the property that weather conditions justified having the Claimant called to inspect his territory on the holiday.

In view of all of the foregoing, the claim is denied.

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 25th day of April 1988.