

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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 Messrs. R. Kaley, J. March, W. Sutton and J. C. Conti holiday pay for December 31, 1983 (New Year's Eve) and January 1, 1984 (New Year's Day observed January 2, 1984) (System Dockets CR-864 and CR-926).

(2) Because of the aforesaid violation, the claimants shall each be allowed sixteen (16) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This is a holiday pay dispute involving several Claimants who lost their regularly assigned positions through job abolishment or displacement by senior employees prior to or immediately after the New Year's holiday.

The applicable agreement provisions, insofar as they are pertinent, are set forth as follows:

"RULE 13 - HOLIDAY - REST DAY WORK

(a) Service performed on assigned rest days
and on the following legal holidays, namely:

In the United States

New Year's Day
Washington's Birthday
Good Friday

In Canada

New Year's Day
Good Friday
Easter Monday

Decoration Day
Fourth of July

Victoria Day
Dominion Day

In the United States

In Canada

Labor Day
Veterans Day
Thanksgiving Day
*Christmas Eve
Christmas

Civic Day
(Province of Ontario)
St. Jean Baptiste Day
(Province of Quebec)
Labour Day
Thanksgiving Day
*Christmas Eve
Christmas

*The day before Christmas is observed.

shall be paid for at the rate of time and one-half, computed on the actual minute basis with a minimum of four (4) hours at the straight time rate for two (2) hours and forty (40) minutes work or less. Such work in excess of sixteen (16) consecutive hours shall be paid at the double time rate.

(b) When any of the above holidays fall on Sunday, the day observed by the State shall be considered the holiday.

(c) When a holiday falls within a four (4) day work week, it may, by agreement, be shifted to the first or last work day of the work week.

RULE 14 - PAID HOLIDAYS

(a) Subject to the qualifying requirements applicable to regularly assigned employees contained in paragraph (b) hereof, each regularly assigned employee shall receive eight (8) hours' pay at the straight time rate of the position to which assigned for each of the holidays enumerated in Rule 13.

Subject to the applicable qualifying requirements in paragraph (b) hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof, provided (1) compensation for service paid him by the Company is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday and (2) he has had a seniority date for at least sixty (60) days or has sixty (60) 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 the union shop agreement, or disapproval of application for employment.

(b) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid him by the Company is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following the rest days shall be considered the workday immediately following the holiday. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

All others for whom holiday pay is provided in paragraph (a) hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by the Company is credited; or

(ii) Such employee is available for service.

Note: 'Available' as used in subsection (ii) above is interpreted to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

(c) When any of the holidays enumerated in Rule 13, or the day observed, falls during an employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for in paragraph (a) of this Rule provided he meets the qualification requirements specified. The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes. An employee's vacation period will not be extended by reason of any of the ten (10) recognized holidays, or the day observed.

(d) Special qualifying provision for employees qualifying for both the Christmas Eve and Christmas Day holiday:

An employee who meets all other qualifying requirements will qualify for holiday pay for both Christmas Eve and Christmas Day if on the 'workday' or the 'day', as the case may be, immediately preceding the Christmas Eve holiday he fulfills the qualifying requirements applicable to the 'workday' or the 'day', before the holiday and on the 'workday' or the 'day', as the case may be, immediately following the Christmas Day holiday he fulfills the qualifying requirements applicable to the 'workday' or the 'day' after the holiday.

An employee who does not qualify for holiday pay for both Christmas Eve and Christmas Day may qualify for holiday pay for either Christmas Eve or Christmas Day under the provisions applicable to holidays generally." (Underscoring added)

In addition, Sections (a) and (b) of Article IV - Holidays of the December 11, 1981 National Agreement are applicable:

"(a) Add the day after Thanksgiving Day and substitute New Year's Eve (the day before New Year's Day is observed) for Veterans Day.

(b) The holiday pay qualifications for Christmas Eve - Christmas shall also be applicable to the Thanksgiving Day - day after Thanksgiving Day and the New Year's Eve - New Year's Day holidays."
(Underscoring added)

The parties have taken widely divergent positions as to the meaning and application of the foregoing provisions. During the handling of this dispute on the property, Carrier contended that Claimants' failure to exercise seniority on January 3, 1984, precluded any holiday payment in accordance with Rule 14(b) of the Agreement. In its submission before the Board, Carrier took a different stance, arguing that Claimants Kaley and March were "regularly assigned employees" who did not meet the criteria for holiday pay embodied in Rule 14(b) because they were not paid any compensation by Carrier for the workday, Tuesday, January 3, 1984, immediately following the New Year's holidays. With respect to Claimant Sutton, Carrier insists that he was an "other than regularly assigned employee" who failed to meet the criteria of being "available for service" the day following the holidays, since he laid off on January 3, 1984, in lieu of exercising his displacement rights. Similarly, Claimant Conti, in the Carrier's view, was an "other than regularly assigned employee" who, in effect, laid off of his own accord by not taking the position of

Welder Helper on January 3, 1984. Finally, in its rebuttal argument, Carrier contended for the first time that the claims should be dismissed because the Organization had incorrectly stated the dates of holiday in its Statement of Claim to this Board.

It is noted from the record, that in all the handling on the property, the reference was to the New Year Holidays and all arguments for and against qualifying for Holiday Pay was fully addressed. The Statement of Claim to this Board may not be technically correct, but both parties fully understood the basics of this dispute and the procedural error is not of such significance to warrant dismissal for the New Year's Eve Holiday.

The Organization maintained that each of the four Claimants were available for service on the day following the holiday, Tuesday, January 3, 1984; therefore, the Organization argued, each qualified for holiday pay in accordance with Rule 14(b).

We cannot agree fully. There is no dispute that each of the Claimants met the qualifying requirements for holiday pay for the day preceding the holidays. The only issue, then, is whether Claimants met the qualifying requirements for the day following the holidays; i.e., January 3, 1984. Claimants Kaley and March, effective January 3, 1984, were displaced from their positions just minutes prior to the start of their work day.

Neither was able to displace prior to the starting time of a position occupied by a junior employee at another location.

We, therefore, conclude that Claimants Kaley and March were available for service on January 3, 1984, and thus each qualified for holiday pay.

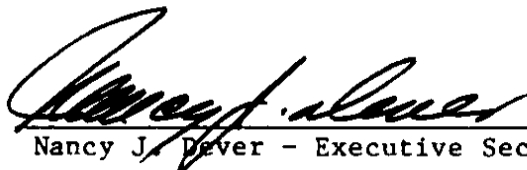
In regards to Claimants Conti and Sutton, however, the situation is different. The position of each Claimant was abolished by appropriate notice prior to the holidays, and there is no evidence either attempted to determine who they could displace prior to the starting time of the position on January 3, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.