

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 permit Mr. G. Saucedo to displace junior Trackman Hughes at Middletown, Ohio on January 2, 1985 (System Docket CR-1426).

(2) The Carrier also violated the Agreement when it failed and refused to allow Mr. G. Saucedo eight (8) hours of pay for a personal leave day (November 21, 1984) he requested and was granted.

(3) The Carrier also violated the Agreement when it failed and refused to allow Mr. G. Saucedo holiday pay for the 1984 Thanksgiving holidays (November 22 and 23, 1984), Christmas Eve (December 24, 1984), Christmas Day (December 25, 1984), New Year's Eve (December 31, 1984) and New Year's Day (January 1, 1985).

(4) The Carrier further violated the Agreement when it improperly deducted thirty-two (32) hours of pay from Claimant Saucedo's pay check No. D1247913 dated January 14, 1985.

(5) Because of the violation referred to in Part (1) hereof, Claimant G. Saucedo shall be allowed two (2) hours and forty (40) minutes of pay at his time and one-half rate and mileage allowance (\$16.00 per day) for each day he is required to operate his automobile between Middletown and Dayton, Ohio continuing until the violation is terminated.

(6) Because of the violation referred to in Part (2) hereof, Claimant G. Saucedo shall be allowed eight (8) hours of pay at his straight time rate.

(7) As a consequence of the violation referred to in Part (3) hereof, Claimant G. Saucedo shall be allowed forty-eight (48) hours of pay at his straight time rate.

(8) Because of the violation referred to in Part (4) hereof, Claimant G. Saucedo shall be repaid the thirty-two (32) hours of pay improperly deducted from his January 14, 1985 pay check."

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 employes 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 instant dispute involves holiday pay. Claimant took a personal day on November 21, 1984, followed by five weeks vacation. Claimant's position was abolished on November 30, 1984. Claimant reported on January 2, 1985, but there is no dispute in the record that he did not work until January 3, 1985. Claimant was denied his holiday pay.

As a preliminary point, this Board finds numerous lines of argument, assertions, refutations and issues by the parties to this dispute in their Ex Parte Submissions to this Board. Only those issues raised, developed and contested on the property are properly before this Board for consideration.

When the Claim was argued on the property the Organization, by letter of January 30 and May 8, 1985, argued that the Claimant was "an other than regularly assigned employee" available to work on January 2, 1985, and entitled to holiday pay under Rule 14b (ii). The Organization argued that the Claimant arrived at work on January 2, 1985, and attempted to displace a junior employee, but was refused. As he was unassigned, available, and did not voluntarily lay off, he was entitled to holiday pay.

The Carrier argues that Claimant was never refused the right to displace a junior employee, but chose to exercise his seniority on January 3, 1985, at Dayton, Ohio, even though there were positions available. Since Claimant did not work on the day following the holidays by his own choice, Claimant did not qualify for holiday pay.

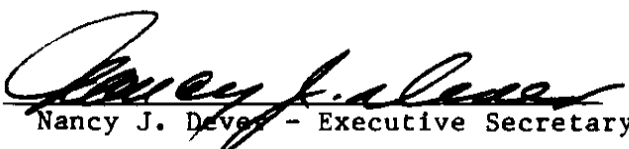
A careful review of the evidence of record as exchanged and argued on property fails to support the Organization's position. There is no probative evidence beyond assertion that Claimant was denied, misled or refused the exercise of his seniority. The Board finds nothing in the on property record of practice or Rule to support the Claim.

The Organization has not met its burden of proof. Claimant did not work on January 2, 1985, and there is a lack of substantial evidence to support the conclusion that his failure to work was due to anything other than his own decision and inaction. The Claim must be denied for lack of proof.

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 16th day of December 1988.