

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

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(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 Mr. R. W. Smith holiday pay for 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) and when it failed and refused to allow Mr. K. H. Bussey holiday pay for New Year's Eve (December 31, 1984) and New Year's Day (January 1, 1985) (System Dockets CR-1341 and CR-1339).

(2) Mr. R. W. Smith shall be allowed thirty-two (32) hours of pay at his straight time rate and Mr. K. H. Bussey shall be allowed sixteen (16) hours of pay at his straight time rate because of the violations referred to in Part (1) hereof."

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 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.

Claimants K. H. Bussey and R. W. Smith established and hold seniority under the Maintenance of Way Agreement. Prior to the time this dispute arose, Claimants Bussey and Smith were regularly assigned to positions headquartered at Columbus, Ohio and Sharonville, Ohio, respectively.

From Thursday, December 20, 1984, until Friday, December 28, 1984, Claimant Smith was on vacation. The Christmas Eve and Christmas Day holidays (Monday, December 24, and Tuesday, December 25) fell during Claimant's vacation period. Saturday, December 29 and Sunday, December 30, 1984, were regularly assigned rest days and Monday, December 31, 1984, and Tuesday,

January 1, 1985, were the New Year's Eve and New Year's Day holidays. When Claimant Smith returned to his regular position on the morning of Wednesday, January 2, he was displaced by a senior employee. Ultimately, Claimant located a junior employee working in Dayton, Ohio and displaced that employee effective Monday, January 7, 1984.

Claimant Bussey received compensation credited to the work day immediately preceding and following the Christmas Eve and Christmas Day holidays and he therefore received holiday pay for those two days. Claimant Bussey also received compensation credited to the work day preceding the New Year's Eve and New Year's Day holidays. However, on the work day following those holidays, Wednesday, January 2, 1985, Claimant Bussey was displaced from his regular position by a senior employee. According to the Organization, Claimant Bussey was unable to locate any junior employees in the Columbus area who he could displace on January 3 or 4, 1985. Claimant Bussey ultimately located a junior employee working at Sharonville, and displaced that employee effective Monday, January 7, 1985.

This dispute was handled as two separate claims during the handling on the property. Claimant Smith sought holiday pay for Christmas Eve, Christmas Day, New Year's Eve and New Year's Day. Claimant Bussey sought holiday pay for New Year's Eve and New Year's Day.

In its notice of intent filed with the Third Division of the National Railroad Adjustment Board, the Organization omitted in its statement of claim that portion of the claim for holiday pay for Claimant Smith which pertained to Christmas Eve and Christmas Day. In its submission to the Board, however, the Organization included the Christmas Eve and Christmas Day holidays as part of the holiday pay sought for Claimant Smith. It also filed a corrected notice of intent to file a claim with the Third Division reflecting those holidays as part of the claim sought. Carrier has contended that this claim should now be dismissed, or, at minimum, that the two additional claim dates be disregarded because of what it perceives to be the Organization's fatal procedural error. We disagree.

This claim was progressed on the property on the basis of four days holiday pay for Claimant Smith, including Christmas Eve and Christmas Day. The omission of those dates in the notice of intent to file appears to be a purely inadvertent mistake or a typographical error which was corrected by the Organization. Moreover, the Organization's submission to the Board is consistent with the claim as it was advanced on the property. We must conclude, therefore, that Carrier was not prejudiced thereby and that the issue before the Board has been clearly joined. We will not dismiss the case or disregard the Christmas Eve and Christmas Day claim dates under these circumstances.

On the merits, we have reviewed the facts and arguments in their submissions to this Board. The only issue, then, is whether each Claimant met the qualifying requirements for the day following the holidays, i.e., January 2, 1985. Both Claimants reported, ready to work only to find each was displaced just prior to the starting of their workday. Neither was able to displace a junior employee at any location prior to the starting time on that day.

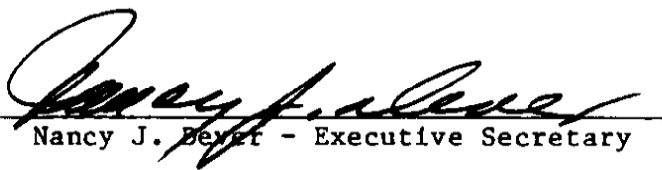
We therefore conclude each Claimant was available for service on January 2, 1985, thus each qualified for holiday pay.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.