

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29978
Docket No. MW-28823
93-3-89-3-226

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(The Atchison, Topeka and Santa Fe Railway
(Company

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

- (1) The Agreement was violated when Southern Division hourly rated employees subject to the provisions of Rule 38 were denied per diem pay for November 26, December 24 and 31, 1987 (System File 100-38-882/11-1620-20-17).
- (2) The Southern Division hourly rated employees subject to the provisions of Rule 38 who were denied per diem pay for November 26, December 24 and 31, 1987 shall each be allowed three (3) days of per diem pay because of the violation referred to in Part (1) above."

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 employee 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.

On February 16, 1988, the Organization filed a claim on behalf of Southern Division employees contending that the Carrier violated Rule 38 of the Agreement when it failed to compensate Claimants for payment of their per diem allowance for the first day of each set of holidays observed on November 26, December 24, and December 31, 1987.

The Carrier denied the Claim stating that it is not valid because it did not name any specific claimants and, furthermore, that none of the Carrier's employees ever received per diem allowances when two holidays fell back to back.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Claimants are entitled to the relief sought. Therefore, the Claim must be denied.

The language that applies to this dispute appears in Note 2 of Rule 38. Note 2 states:

"Note 2: The employees subject to this Rule 38-(c) shall be paid the applicable per diem allowance referred to herein for any holiday(s) observed on other than the first or last day of the assigned work week, provided they perform compensated service on the work days immediately preceding and following the day(s) observed during that week as the holiday(s)."

The Organization argues that the Claimants are entitled to the per diem for the first day of three back-to-back holidays on the basis of Note 2. However, we find that such entitlement does not exist. We are in agreement with the Carrier's position as stated in its letter dated April 29, 1988. In that letter, the Carrier stated:

"It was the intent of Rule 38-(C), Note 2 that when holidays fell on days either immediately prior to the rest days of employees receiving per diem allowance, i.e., Thursday and Friday or Friday or on days immediately following the assigned rest day i.e., Monday and Tuesday or Monday, no per diem allowance would be compensable. The only holidays on which per diem allowances would be applicable are those which fall on a day(s) where there are work days immediately preceding and following such holidays. For instance, if an employee who is entitled per diem allowance has a regular assignment Monday through Friday and the holiday(s) fall on Tuesday and/or Wednesday and/or Thursday, such holiday(s) would be compensated under the provisions of the aforementioned rule providing such employees perform compensated service on the work days

immediately preceding and following the day(s)
observed as the holiday(s) during that week."

It is also important to note that the Agreement went into effect in 1982 and the Organization apparently never raised this issue over the four preceding Thanksgiving holidays all of which involved back-to-back holidays that are similar to the ones in dispute here.

For all of the above reasons, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.