

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30207
Docket No. MW-28529
94-3-88-3-349

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
(Soo Line Railroad Company

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 Sectionman K. Luoma holiday pay for the July 4, 1987 holiday (System File R498/800-34-C-56).
- (2) Mr. K. Luoma shall be allowed eight (8) hours' pay at the sectionman's pro rata rate and he shall have all overtime, vacation, fringe benefits and other rights restored which were lost to him as a result of the aforesaid violation."

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 employe 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 Claim for holiday pay for July 4, 1987. The Organization contends that prior to the July 4, 1987, holiday, Claimant was recalled from furlough to work as a sectionman on Crew 135. During the time he was filling that position, he was recalled to fill an extra gang laborer position on the Z-16 Sled Gang. Claimant filled his work assignment on Crew 135 through July 3, 1987. On the first workday following the July 4, 1987, holiday, he reported to Z-16 Sled Gang. Claimant received compensation credited by the Carrier to the workdays immediately preceding and following the July 4, 1987, holiday.

In view of the foregoing, the Organization argues that Claimant was entitled to holiday pay under the National Holiday Provisions (Appendix A) which states, in pertinent part:

"Section 3. A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the Carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days...."

The Organization argues that Claimant was a regularly assigned employee on the workdays preceding and following the July 4, 1987, holiday, and Claimant had compensation paid to him by Carrier for those days. Therefore, the Organization contends, Claimant is entitled to holiday pay.

Carrier maintains that the Organization did not prove that Claimant was a "regularly assigned employee" so as to fall within the provisions of Section 3 of Appendix A, referred to above. It is obvious to Carrier, from the fact that Claimant worked as a section laborer on Crew 135 on the day before the holiday and then as a tie gang laborer on the Z-16 Sled Gang after the holiday, that Claimant was not regularly assigned for purposes of compensation for the July 4th holiday.

Moreover, Carrier submits, Claimant did not meet the qualifying requirements in Section 1-C of Appendix A, which provide:

"Other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof...provided (1) compensation paid him by the Carrier is credited to 11 or more of the thirty calendar days immediately preceding the holiday...."

Carrier maintains that the record shows that Claimant performed service on only seven of the preceding thirty days, and therefore he was not entitled to holiday pay under the provisions of Section 1-C. Having failed to meet the requirements of either Section 1-C or Section 3 of Appendix A, Carrier asserts the Claim must be denied.

As both parties acknowledge, the key to this dispute is whether or not Claimant was a "regularly assigned employee" within the meaning and application of the National Holiday Provisions (Appendix A). Precedent awards on this subject have concluded that a "regularly assigned employee" is one who is assigned to and identified with a specific position for indefinite duration, subject only to displacement by a senior employee or as a result of the job being abolished in accordance with the Agreement. A "regularly assigned employee" is distinguished from an extra or furloughed employee temporarily filling a position owned by an absent employee due to vacation, sick leave, etc. See Third Division Awards 12180, 14325, and 15894.

Unfortunately, a review of the record and the submissions before this Board does not contain sufficient probative evidence to enable us to make a determination as to Claimant's status. There is simply no evidence indicating whether he was assigned to a specific position or whether he was temporarily filling a vacancy. Given this factual impasse, and the fact that the burden of proof was on the Organization, the Board must reject the Organization's claim that Claimant was entitled to holiday pay under Section 3 of Appendix A.

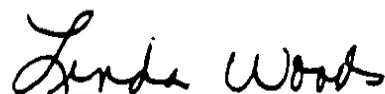
By the same token, the Organization has failed to prove that Claimant met the qualifying requirements for holiday pay as an "other than regularly assigned employee" under Section 1-C of Appendix A. Carrier maintained, without rebuttal by the Organization, that Claimant did not work the necessary eleven of the thirty days preceding the July 4 holiday. Absent evidence that Claimant fell under the rubric of either Section 1-C or Section 3 for purposes of qualifying for holiday pay, we have no alternative but to deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.