

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31384
Docket No. MW-31814
96-3-94-3-101

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Chicago Central and Pacific
(Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to allow Mr. D. F. Pingree holiday pay for the 1992 Thanksgiving Day and the day after Thanksgiving holidays (Carrier's File BMW 93-003).
- (2) As a consequence of the violation referred to in Part(1) above, Mr. D. F. Pingree shall be allowed sixteen(16) hours' pay at his straight time rate for the 1992 Thanksgiving Day and day after Thanksgiving holidays."

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.

This holiday pay dispute is based upon a Holiday Pay Rule peculiar only to the parties.

The pertinent provisions of Rule 32 read as follows:

- (b) "A regular assigned employee shall qualify for the holiday pay if the employee performs at least six(6) hours of compensated service on the work days 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 his rest days shall be considered the workday immediately following. 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. These qualifications shall also apply to employees relieving regularly assigned employees.

- (c) 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 for in paragraph (a) above, provided compensation for service paid him by the Carrier is credited to eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday and the employee has had a seniority date for at least sixty (60) calendar days or has sixty (60) calendar 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 a union shop agreement, or disapproval of application for employment." (Underlining added)

Claimant was furloughed November 20, 1993. As of the holidays (Thanksgiving and the day after) he was other than regularly assigned, had 11 or more credited workdays in the 30 day period preceding the holiday, and had a seniority date at least 60 days prior to the holidays, but performed no service before and after the holidays.

The underscored portion of Rule 32(c) quoted supra is that in dispute.

The Carrier, in its handling on the property, related to the discussions the parties had during their negotiating sessions relative to the Holiday Pay Rule, as it now stands. According to the Carrier, the parties have had many disputes concerning who was or was not available for service on the workday preceding and following the holiday and had, apparently, a meeting of the minds to drop the availability clause on the day preceding and following the holiday. In lieu thereof, the usual Rule for other than regularly assigned employees contains the clause:

Subject to the applicable qualifying requirements in paragraph (b) hereof.

The Organization's response to Carrier's statement of intent was that the underscored portion of Rule 32(c) refers only to that portion of Rule 32(b) reading "***These qualifications shall also apply to employees relieving regularly assigned employees."

In this Board's opinion, the Carrier's position squares with the Rule. Rule 32(b) establishes the condition precedents to qualify for holiday pay. This includes working at least six hours on the workday preceding and following the holiday. Rule 32(c) simply sets forth further condition precedents that the other than regularly assigned employee must meet to qualify for holiday pay.

The burden of proof necessary to achieve a sustaining award is not present in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.