

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32392
Docket No. SG-32345
97-3-95-3-184

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Providence and Worcester Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Providence and Worcester Railroad Company (P&W):

Claim on behalf of K.F. Stewart for payment of two days' wages, account Carrier violated the current Signalmen's Agreement, particularly Article 7:3(f), when it deducted payments for the December 24 and 25, 1992 holidays from Claimant's pay. General Chairman's File No. 62-003. BRS File Case No. 9641-P&W.”

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 were given due notice of hearing thereon.

This claim requests holiday pay for December 24 and 25, 1992. The negotiated holiday pay rule on this property reads, in pertinent parts, as follows:

"Article 7:3(f)

(f) To be paid for a holiday listed in Article 7:3(e), an employee must work his last regularly scheduled work day before the holiday and his first regularly scheduled work day after the holiday. In the event an employee is properly scheduled to be off prior to a holiday or after a holiday, he must work the last regularly scheduled work day before the authorized absence and/or the first regularly scheduled work day after the authorized absence."

The fact situation in this dispute indicates that Claimant worked the regularly scheduled work day prior to the consecutive holidays here in question. The first regularly scheduled work day following the holidays was December 28, 1992. Claimant requested Carrier's permission to be absent from his assignment on December 28 due to the illness of his child. There is no evidence in the case record to suggest or indicate that his absence on this date was not authorized. The next regularly scheduled work day following the holidays and the December 28 authorized absence was December 29, 1992. On that date, Claimant again requested to be absent from his assignment due to the continued illness of his child and the added illness of his wife. Again, there is no evidence of record to suggest that this second absence was not authorized. While neither party to the dispute states in the case file record whether or not Claimant worked his regular assignment on December 29, the gist of the issues raised by the parties centers on the holiday pay for December 24 and 25 and their positions and arguments relative thereto center around Claimant's absence from his regular assigned position on December 28 and 29, 1992.

Carrier asserts that, in addition to the Agreement language as quoted above, there exists a so-called "side-bar" letter which impacts on this dispute. The letter in question reads as follows:

**"Mr. Roland E. McKenzie
General Chairman
Brotherhood of Railroad Signalmen
230 East Orange Street
Lancaster, PA 17602**

Dear Mr. McKenzie:

This refers to our discussions during negotiations relative to the new Article 7:3(f). This understanding reflects our position concerning your question whether sickness can be considered as a bonafide authorized absence. It is our position that sickness can be considered so only when authorized by the Supervisor. If the Supervisor has not authorized it, the employee must provide verification of his or her sickness by a doctor's notice.

**Very truly yours,
/s/ Harry A. Snyder
Director Labor Relations"**

Carrier insists that this letter alludes only to an employee's personal sickness and does not cover a situation involving the sickness of a family member or members. They say that in this case the sickness which precipitated Claimant's absences on December 28 and 29 was that of a family member or members - not Claimant. Therefore, Carrier argues that their withholding of the holiday pay was justified on the basis of the language of the "side-bar" letter and the fact that Claimant did not work on the first regularly scheduled work day after the holidays.

The Organization argues primarily that the specific language of the negotiated rule contains a clearly identified exception dealing with "authorized absence." They say that in this case the Claimant sought and was granted an "authorized absence" on the dates in question. They contend that he did, in fact, meet the qualifying requirements of the rule for allowance of holiday pay.

Carrier has advanced an ancillary argument relative to its right to review prior wage allowances and to adjust such allowances which, in their judgment, are erroneous.

This argument stems from the fact that the holiday pay for the 24 and 25 was initially paid and later withheld from Claimant's pay.

The Board finds no fault with Carrier's argument in this regard. This Board has often held that any payment which upon review or audit is found to be erroneous may properly be adjusted. However, that is not the issue which is determinative in this case.

The Board additionally finds no area of disagreement with the "side-bar" letter relative to the sickness of the employee being considered a bonafide authorized absence. That letter stands on its own and means just what it says. It does not, however, abrogate, supersede or otherwise change the general language and meaning of the negotiated rule. That too is not the issue which is determinative in this case.

Here we have a negotiated rule which contains a provision specifically addressing the basic issue found in this case. The Claimant, to receive holiday pay, must bridge the holiday by working the work day before and the work day after the holiday. That requirement is modified by the Agreement language which provides that an "authorized absence" on the work day before or the work day after the holiday will preserve the bridging effect and will assure the payment of the holiday allowance.

That is the issue which exists here. The record contains nothing to show that Claimant's absence on December 28 and 29 were not authorized by the Carrier. Therefore, it is the Board's conclusion that Claimant met the holiday pay qualifying requirements of Article 7:3(f) and the claim as presented is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of December 1997.