

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35994
Docket No. MW-33277
02-3-96-3-753

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. B. J. Lichvar holiday pay for the New Year's Day holiday observed on January 2, 1995 (System Docket MW-3982).
- (2) As a consequence of the aforesaid violation, Mr. B. J. Lichvar shall be allowed eight (8) hours' pay in accordance with the provisions of Rule 14.”

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.

The basic facts are undisputed. The Claimant was denied holiday pay for the observed New Year's Day holiday on January 2, 1995 on the ground that he did not meet the qualification requirements of Rule 14. According to the record, the Claimant was displaced into furlough status following his last regular workday on December 2, 1994. Given his status as an unassigned employee resulting from that furlough, Rule 14 required that “. . . compensation for service paid him by the Company is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday. . . .”

The qualifying period ran from December 3, 1994 through January 1, 1995. The Organization contends that the Claimant met the 11-day requirement as follows:

**“December 5, personal day; 1 day credit
December 7, 8, 12, 13, 14, 19, 20, vacation pay; 7 days credit
December 25, 26, January 1, holiday pay; 3 days credit.”**

Although the Carrier agrees that the Claimant was paid as noted above, it says that none of the pay qualifies because the Claimant had no scheduled workdays after December 2, 1994; therefore, none of the pay he received constituted “. . . compensation for service . . .” within the meaning of Rule 14.

Both parties cited prior Awards in support of their respective positions that reveal a split of arbitral analysis. On this record, however, it is not necessary to reconcile the conflicting Awards because the Carrier’s actions undermine its position.

Despite its stance on the claim for holiday pay for January 2, 1995, it is clear that the Carrier had to have credited the disputed days for qualification for the January 1, 1995 holiday as well as the December 25 and 26 holidays. If the days had not been so credited, the Claimant would not have qualified for the holiday pay for those days.

It is undisputed that the Claimant received holiday pay for January 1, 1995. The qualifying period for that holiday ran from December 2, through December 31, 1994. Under the Carrier’s theory, the most credit the Claimant would have had, in terms of qualifying days, was just one day for his last day worked, December 2, 1994. Yet it is clear that the Carrier did consider the Claimant qualified for the holiday pay for January 1, 1995. The inescapable conclusion that emerges from this is that the Carrier did consider the disputed days as being valid credit for qualification purposes. Similar analysis shows that the Claimant would only have qualified for the holiday pay for December 25 and 26, which he did receive, if the Carrier counted at least some of the disputed days.

Because the record shows that the Carrier did credit the disputed days for earlier holiday qualification, we see no reason to reach a contrary result on the instant claim.

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 19th day of March, 2002.

**Carrier Members' Dissent
to Award 35994 (Docket MW-33277)
Referee Wallin**

The Holiday requirement for Claimant was that he needed compensation for service on 11 or more of the prior 30 days preceding the holiday. It is undisputed that Claimant performed no service after December 2, 1994. Personal days and vacation do not count for service, Third Division Award 29936, PLB 4208 Award 7. Claimant didn't meet the requirement.

Whether Claimant was erroneously paid holiday pay for December 25 and 26, 1994 or not was not the issue. The Majority conclusion that Claimant was qualified for Holiday pay for January 2, 1995 is an assumption without evidence.

We Dissent.


Paul V. Varga


Martin W. Fingerhut


Michael C. Lesnik