

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36274
Docket No. CL-35926
02-3-99-3-865

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12502):

This claim is filled on behalf of Mr. Wayne Bailey, Clerk, Accounting Department, North Billerica, MA. The claim is for eight hours at the rate of time and one-half, for July 4, 1998.

The Carrier violated the Agreement when it docked Mr. Bailey for the holiday, after his having worked the day before (July 3, 1998) as well as the day after (July 6, 1998). Also, the Carrier allowed employees the option of getting paid an extra day's pay or taking off Friday, July 3, 1998, which is not a part of the contract. The Carrier should have allowed Mr. Bailey to be off on Monday, July 6, 1998.

The rules violated are 19.1 through 19.6 and all other rules of the Agreement.

This claim is valid and must be paid.”

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.

In 1998, the Claimant was a regularly assigned Accounting Clerk at the Carrier's headquarters at North Billerica, Massachusetts. He worked from 8:00 A.M. to 5:00 P.M., Monday through Friday, with Saturday and Sunday rest days.

The Claimant worked his entire shift on Friday, July 3, 1998. Saturday, July 4, 1998, was the Independence Day Holiday. The Claimant reported to work at 8:00 A.M. on Monday, July 6, 1998 but, some time during the morning hours, he departed work to attend to a personal emergency. As a result, the Carrier did not pay the Claimant for the Fourth of July Holiday contending that he had not satisfied the applicable qualifications for holiday pay entitlement.

Rules 19.1 and 19.2 of the December 31, 1995 Agreement provide:

"19.1 Subject to the qualifying requirements specified below, eligible Employees will receive 8 hours pay at the straight time hourly rate for each of the following holidays:

New Year's Day	Thanksgiving Day
Presidents' Day	Day after Thanksgiving Day
Good Friday	Christmas Eve (<i>the day before Christmas is observed</i>)
Memorial Day	Christmas Day
Fourth of July	New Year's Eve (<i>the day before New Year's is observed</i>)
Labor Day	

When any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation will be considered the holiday.

19.2 To be eligible for the holiday pay provided for in paragraph 19.1 Employees must either work or be available for work on the last work day before and the first work day after the holiday. Other than regularly assigned Employees will be eligible for the paid holidays or pay in lieu thereof, provided (1) compensation for service paid them by the Carrier

is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday and (2) they have had a seniority date for at least sixty (60) days or have sixty (60) 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 the union shop agreement, or disapproval of application for employment.”

The Carrier concedes that the Claimant would have been entitled to holiday pay for July 4, 1998 if he had worked a complete shift on July 6, 1998. Thus, the Claimant met the before holiday qualification by working his entire shift on July 3, 1998. The issue is whether the Claimant’s partial day of work performed on July 6, the first work day following the holiday, satisfied the post holiday qualification.

The Board recently adjudicated an identical dispute between the same parties. In Third Division Award 33497, the Board held that an employee met the prerequisites set forth in the first sentence of Rule 19.2 if the employee performed some work on the day after the holiday even though the employee did not work a full shift. The Board specifically found that the Rule did not mandate that an employee work a minimum of eight hours on the first workday after a holiday to satisfy the qualifying criterion in Rule 19.2.

For the reasons more fully set forth in Third Division Award 33497, the Board sustains the claim for eight hours of holiday pay as opposed to pay at the time and one-half rate.

AWARD

Claim sustained in accordance with the Findings.

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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 28th day of October 2002.