

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37139
Docket No. MS-37961
04-3-03-3-384**

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

(Michael E. Allen

PARTIES TO DISPUTE: (

(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Why was I not paid job protection pay for sick days, and overtime days?”

On sick days, November 5 and 6 of 2002, I was not paid my job protection pay for a loss of \$53.62 each day.

On overtime days, November 17 and 29 of 2002, I was not paid at my job protection rate of pay for a loss of \$80.43 each day. In fact, I did not even receive my daily job protection rate of \$142.22 for these days. I was paid \$132.90 for each day.”

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.

Based on what the Board is able to determine from studying the Claimant's Statement of Claim, he believes that during the time period pertinent to this dispute, he worked under the Santa Fe Agreement. He further believes that he is entitled to his EMR or protection rate for overtime; the overtime rate when working holidays; and that no deduction should be made for time not worked on account of illness. Gold Book Rule 46 is cited in support of his claim.

In reading the evidence of record, the Side Letter from J. J. Fleps, Vice President - Labor Relations to General Chairman R. A. Arndt and General Chairman S. F. Watson established that Gold Book Rule 46 - Sick Leave on the railroad to which the employee was transferred is applicable when calculating pay if absent due to illness. The Side Letter reads, in pertinent part, as follows:

"This will confirm our discussion in conference relating to the merger of BN and Santa Fe railroads regarding sick leave rules.

It was agreed that employees transferring from BN to Santa Fe, or vice versa, will be subject to the sick leave agreement in effect on the railroad to which transferred."

Because the Claimant was a BN employee working on what was formerly the ATSF, the ATSF Sick Leave Agreement would apply; it reads, in pertinent part, as follows:

"Subject to the conditions hereinafter enumerated, employees who have been in the continuous service of the Company for the period of time specified below will not have deduction made from their pay for time absent account of a bona fide case of sickness."

Records show that the Claimant was paid 100% of his wages without deduction for absence due to illness in accordance with the ATSF Sick Leave Agreement. The Blue Book Agreement on Protected Employees and supplemental allowance is not in effect as pertains to this Claimant. In fact, employees are expressly disqualified from protective benefits for any period of absence from the Carrier's service.

Regarding calculation of pay when working extra or on holidays, Article II, Section 1(a), Appendix A, and Article II, Section 7(a) Blue Book are controlling provisions of the Agreement. Article II, Section 1(a), Appendix A reads, in pertinent part, as follows:

"Protected Employee who held a regular assignment prior to the date he became a Protected Employee, shall be guaranteed a minimum daily wage equivalent to the daily rated position to which regularly assigned prior to that date. The guaranteed daily rate of pay shall be multiplied by the number of workdays and holidays falling in the semi-monthly pay period and each employee shall receive no less than this amount each pay date."

The Claimant's pay records show that he was compensated in accordance with the formula set forth in the Agreement.

In Article II, Section 7(a) we find:

"Time worked in excess of eight (8) hours per day or five (5) days per week shall be paid for at the rate of the position worked at overtime rate in addition to the guaranteed rate or the rate of the position worked, whichever is greater."

The Claimant worked overtime on November 17 and 29, 2002. Records established that he was compensated at the overtime rate for the job on which he worked in addition to his protected rate. His protected rate benefits were not offset by overtime.

There is a great divide between the Claimant's interpretation of the Gold Book and the Blue Book, and the position adopted by the Carrier. The Carrier maintained throughout that the Claimant had simply misinterpreted this rather lengthy and complex Agreement. The Board is inclined to agree.

Although it may seem reasonable to a layperson employee that he should realize a positive difference in net pay when working holidays or Sundays, long tenured employees know that it is a fundamental reality in the railroad industry

that holidays may be considered regular work days. Labor Agreements, such as the Blue Book Protective Agreement may be structured in such a way that the employee may be required to appear for work on every day of the month for which he is scheduled in order to fully protect his guaranteed monthly wage.

After reading and reviewing the provisions of the Blue Book, the Gold Book, and other Schedule Rules; we are satisfied that the Carrier provided Agreement support, a clear rationale and detailed calculations in defense of its argument.

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 25th day of August 2004.