Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37693
Docket No. MW-37641
06-3-02-3-773

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak) –
(Northeast Corridor

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 Welder Helper D. Satterfield for the dates of November 21 and 22, 2001 (System File NEC-BMWE-SD-4159 AMT).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D. Satterfield shall now be compensated for nine (9) hours' pay at his respective straight time rate of pay."

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 Claimant is a Welder Helper regularly assigned a tour of duty from 9:30 P.M. to 6:00 A.M. Sunday through Thursday, from his Baltimore, Maryland, headquarters. The Claimant reported to his headquarters at 9:30 P.M. on November 21, 2001, the day preceding the Thanksgiving Day holiday, listened to the reading of the Safety Rule, heard the job assignments for the evening, and left the property one hour later without actively participating in any of the day's activities. The Claimant received no compensation for November 21, 2001, nor holiday pay for November 22, 2001, because it was determined by the Carrier that he did not qualify under the holiday pay provisions of Rule 48(f). This claim seeks pay for one hour on November 21 and for eight hours of holiday pay on November 22, 2001. The Claimant worked his full tour on the day immediately following the holiday.

The Carrier disputed on the property that the Claimant informed his Foreman that he was sick when he left on November 21, 2001. No discipline was issued to the Claimant for leaving on that day. The Organization did not rebut the Carrier's assertion on the property that the Claimant was advised by his supervisor that attendance at a job briefing would not meet the requirement for holiday pay. The Organization relies upon the following provisions of the agreement in support of its claim.

"Rule 41 - Starting and Ending Time

Time of employees, except those covered by Rule 76, will start and end at their advertised headquarters.

Rule 48 – Holidays

(f) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof, if compensation paid by AMTRAK is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. . . .

(g) Except as provided in the following paragraph, all others for whom holiday pay is provided in paragraph (a) hereof, shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by AMTRAK is credited; or
(ii) Such employee is available for service."

The Organization argues that the Claimant was contractually entitled to be compensated for the hour that he was on duty at work on November 21, 2001, starting at his headquarters pursuant to Rule 41. It asserts that service under this Agreement encompasses the concept of work, citing Third Division Awards 826 and 25508. The Organization contends that precedent establishes that any amount of service on the qualifying days is sufficient to support the qualification for holiday pay, relying on Second Division Awards 11103, 11719, 13612, and Third Division Awards 23398, 23414 and 25525. Before the Board the Organization relies upon the Claimant's attendance at a safety meeting in arguing that, because Section III, Paragraph F of the System Safety Agreement requires that employees shall be paid for time spent in training, the one hour spent at work by the Claimant on November 21, 2001 is compensable and qualifies him for holiday pay.

The Carrier initially argues that the Organization's reliance on the System Safety Agreement is a new argument which should not be considered by the Board and is premised on the mischaracterization by its Division Manager of the Claimant's presence at the reading of the Safety Rule as attendance at a safety meeting. As to the merits, the Carrier posits that because the Claimant performed no service on November 21, 2001 as intended by the Agreement, he is not entitled to compensation just for showing up, which was made clear to him by his supervisor at the time. Absent such compensable service, the Carrier argues that he does not qualify for holiday pay under Rule 48(g) a fact differentiating this from other cases relied upon by the Organization. It notes that being at headquarters while the Safety Rule is read does not rise to the level of training and is not the situation Rule 41 was intended to cover. The Carrier contends that the facts support the conclusion that the Claimant had no intention of performing any work on November 21, 2001, and merely attended to attempt to qualify himself for holiday

pay. The Carrier relies upon Second Division Awards 6893 and 9301 and Third Division Awards 22268, 23831 and 25947 in urging the Board to reject the Claimant's sharp practice of abusing the holiday pay provision in this fashion.

A careful review of the record convinces the Board that, like the situation in Second Division Award 6893, resolution of this claim is dependent upon whether the Claimant should have been paid for the hour that he attended at work on November 21, 2001. If the Carrier was obliged under the Agreement to compensate the Claimant for the time that he spent at headquarters listening to the reading of the Safety Rule and work assignments, then the Claimant would be entitled to holiday pay pursuant to the provisions of Rule 48(f). Unlike most of the cases relied upon by the Organization where the Carrier paid compensation to the employee for some amount of service, however small, on the qualifying days (Second Division Awards 11103, 11719, 13612) the Carrier herein disputes the Claimant's entitlement to any compensation for what he did on November 21, 2001.

The Board will not consider the Organization's belated argument that the Claimant is required to be compensated for his attendance at a safety meeting on November 21, 2001 under the System Safety Agreement, because it was not argued on the property and appears to be based upon a mischaracterization of the facts that both parties admit. The Claimant came to headquarters, clocked in, attended the reading of the Safety Rule and assignment of work session, but performed no other work. He apparently obtained his supervisor's approval to leave, and did so. The Organization did not rebut the Carrier's contention that the Claimant was informed that his presence at the job briefing would not qualify him for receipt of holiday pay prior to his leaving. Thus, we find that the Claimant was on notice that the Carrier would take the position that he performed no compensable service on November 21, 2001 because he did no actual work in sufficient time to permit him to accept and perform his job assignment, at least for a minimal amount of time, before marking off in order to be able to qualify for holiday pay. Despite his presence at headquarters for one hour, these particular circumstances support the Carrier's conclusion that the Claimant attended on November 21, 2001 without any intention of performing his work assignment, and is more in line with the rationale of the Board in Second Division Awards 6893 and 9307 than in the cases cited by the Organization.

No compensation was paid to the Claimant under Rule 48(f) and Rule 48(g) sets forth the requirement that the Claimant satisfy either the condition of receiving credit for "compensation for service" or being available for service on November 21, 2001 in order to qualify for receipt of holiday pay. There is no doubt that the Claimant did not make himself available for service when he left and was not placed "on call" as was the situation in Third Division Award 25508. Had the Claimant performed any service for the Carrier on November 21, 2001, he would have been entitled to compensation beginning with the time spent at headquarters from 9:30 P.M. under Rule 41. However, under the particular facts of this case, the Board must conclude that the Organization did not satisfy its burden of proving that the Claimant performed compensable service on November 21, 2001 merely because he was on Company time as asserted. To prevent abuse of the provisions of the Agreement, and to give reasonable interpretation to the intent of the parties in agreeing to the holiday pay qualification, we will deny the claim. See Second Division Award 6893.

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 30th day of January 2006.