Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37748
Docket No. CL-37160
06-3-02-3-219

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the System Committee of the Brotherhood (GL-12810) that:

1. Carrier violated Rule 26 (Holidays) on October 13, 2000, when it improperly deducted holiday pay, Labor Day, September 4, 2000, from Clerk Carolyn Larder's wages, Position 0681-117, AAR Accounts Clerk, located on District 15.

2. Carrier will now be required to compensate Clerk Larder, ID 782408 for the holiday, eight (8) hours pay at the straight time rate of her position ($152.97) in addition to any other earnings and entitlements."

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 an AAR Accounts Clerk in Jacksonville, Florida. Her work record during the period relevant to this dispute was as follows:

Thursday	August 31, 2000	Sick
Friday	September 1, 2000	Vacation
Saturday	September 2, 2000	Rest Day
Sunday	September 3, 2000	Rest Day
Monday	September 4, 2000	Holiday
Tuesday	September 5, 2000	Worked

It is undisputed that after initially being paid for the September 4 Labor Day Holiday, that pay was then deducted from her paycheck of October 13, 2004. The Claimant questioned that action, prompting her Supervisor on November 2 to e-mail payroll as follows:

> "Carolyn used a vacation day prior to the holiday to protect her holiday and worked the day after . . . please explain how she still lost the holiday??? Thanks, Marie."

Payroll replied the same day:

> "C. Ladner . . . was approved and paid 8 Hol 9-4-00 on ppe 9-15-00, however, she was not due holiday pay because she was paid 8 SIC 8-31-00 which was her qualifying day before the holiday. She was on Vac 9-1-00. Vacation is a neutral day and does not qualify her for Holiday. . . ."

The issue thus raised by this claim is whether the Carrier's action in withholding holiday pay for Labor Day 2000 violated Rule 26 of the Agreement.

Rule 26 - HOLIDAYS provides:

* * *

> "(d) A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof, if compensation paid him by the Carrier is credited to the work days immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly

assigned employee's work week, the first work day following his rest days shall be considered the work day immediately following. If the holiday falls on the first work day of his work week, the last work day of the preceding work week shall be considered the work day immediately preceding the holiday.

(e) When any of the nine (9) recognized holidays enumerated in this rule, or any day which by agreement or by law or proclamation of the State or Nation has been substituted or is observed in place of any of such holidays, falls during an hourly or daily-rated employee's vacation period, he shall receive, in addition to his vacation compensation, the holiday pay provided for therein if he meets the qualification requirements specified. The 'work days' and 'days' immediately preceding and following the vacation period shall be considered the 'work days' and 'days' preceding and following the holiday for such qualification purposes."

The Carrier here asserts that Thursday, August 31, is the critical day for determining entitlement to holiday pay in this instance because vacation days are not "qualifying days" but rather are "neutral." Manager Administration L. Bafford's February 2, 2001 letter denying the claim somewhat confusingly states that position. In our judgment, it contains both a factual error and insists upon a two-step review that is not referenced in the language of the Agreement, stating in part:

". . . when applying Rule 26, a vacation day is considered a neutral day and therefore does qualify an employee for holiday pay. In accordance with Rule 26 an employee must perform compensated service on the assigned work day immediately preceding and immediately following a holiday in order to qualify for holiday pay. Since Clerk Larder marked off sick on the assigned work day immediately preceding the Labor Day holiday, and did not perform compensated service on that day, she is not entitled to holiday pay for Labor Day. . . ." (Emphasis added)

Had the Claimant in fact marked off sick on the workday immediately preceding the holiday, as asserted, the case would be tidier. Or had she been in the middle of a vacation when the holiday fell, as the Carrier argues, her entitlement may have been controlled by the parties' "mutually accepted interpretation of Rule 26 (d)" addressing such factual patterns. That too would simplify matters. But she was not marked off

sick and not in the middle of a vacation on the workday immediately preceding the holiday.

To be entitled to holiday pay under Rule 26, compensation must be "credited to" the work days immediately preceding and following the holiday. Compensation was unquestionably credited to September 5, the day following Labor Day. Was compensation "credited to" the day preceding the holiday? For the reasons that follow, the Board finds that it was.

First, notwithstanding the Carrier Member's otherwise well-developed Memorandum to the contrary, the Third Division authority supplied for our review appears to not support Carrier's position, or at least not with much consistency. Indeed, the predominant view of those cases addressing analogous facts under similar Rules sustains the Organization's position.[1] Additionally, some of the authority cited by the Carrier is from the Second Division. There is fairly obvious tension between Second and Third Division precedent on the general issues, which does little to impose order on the chaos.[2]

Secondly, the Organization points out that an express exception is found in Rule 26 of the Agreement applicable to Sick Leave and Compassionate Leave, excluding both from consideration as compensation for purpose of qualifying for holiday pay:

> "Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule." [3]

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[1] The Carrier relies heavily on Third Division Award 23831. That case involves other parties and implicates a very different fact pattern featuring a Signalman on call for the two days preceding a holiday and hospitalized on the day following. The issue presented was whether the Claimant's status "on call" changed a rest day to a work day for purposes of applying a different Rule. Accordingly, it is inapposite. It further cites Second Division Award 10112. The Organization relies upon, inter alia, Third Division Award 26305 (". . . had the Parties intended other exceptions [beyond bereavement pay and sick leave pay] they would have, being skilled negotiators, stated them."); and Public Law Board No. 5336 Award 3 (Plain language of Agreement and settled Second Division authority trump past practice.)

[2] Second Division authority, based on our review of the cases provided, is apparently fairly uniform in holding that a vacation day is not a workday for purposes of determining holiday pay eligibility. We have made no effort to examine the differences, if any, between the applicable rules etc.

[3] Article III – Holidays, Section 2, December 28, 1967 Agreement and June 24, 1968 Agreement. Cited in Award 71, Public Law Board No. 2263 (Eischen) (1987) (Consolidated Rail Corporation & TCIU).

Noting this exception, and recognizing the "two distinct lines of precedent on this issue followed by the Second and Third Divisions of the NRAB, neither of which is per se unreasonable or fallacious," Public Law Board No. 2263, Award 71 (1987) found for the claimant under a virtually identical set of facts. Relying on the "long line of consistent decisions by the NRAB Third Division" offered by the TCIU, the Board stated in part:

> "The holiday rule language . . . provides an express exclusion for qualifying days of compensation paid under sick leave rules or practices but contains no other exceptions and under accepted principles in contract construction no other exceptions should be inferred." (Citations omitted.)

We find that analysis persuasive. For the reasons stated above, and in deference to what appears to be prevailing Third Division precedent, we conclude that the claim must be 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 21st day of March 2006.