

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39858
Docket No. SG-38772
09-3-NRAB-00003-050175
(05-3-175)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. L. Vasquez, for 32 hours at his straight time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly the National Holiday Agreement and Rule 80, when it improperly reclaimed holiday compensation from the Claimant for Christmas Eve, Christmas Day, New Year’s Eve, 2003 and New Year’s Day, 2004. Carrier’s File No. 1393994. General Chairman’s File No. S-National Holiday Agreement, 80-468. BRS File Case No. 13116-UP.”

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.

Claimant J. L. Vasquez regularly worked a four-day, ten hour schedule. He was on medical leave through December 21, 2003 and then took two single days of vacation on December 22 and 23. December 24 and 25 were holidays and December 26 was not a scheduled work day for him. December 27 and 28 fell on a weekend and the Claimant took two more single days of vacation on December 29 and 30. December 31 and January 1, 2004 were holidays. The Claimant resumed his regular work schedule on January 2.

The Carrier initially paid the Claimant for the first three holidays (December 24, 25 and 31) but subsequently sent him a letter of recoupment, stating that the holiday payments had been made in error because he had not worked on the workdays immediately preceding and immediately following the holidays. It never paid him for January 1.

Section (3) of the National Holiday Agreement states in pertinent part that “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 workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days.” (Emphasis added)

The Board previously addressed the question of whether vacation days taken before or after holidays serve to qualify an employee for holiday pay under Section (3) of the National Holiday Agreement. In Second Division Award 9977 Referee Martin F. Scheinman stated:

“In negotiating Section 3, the parties chose their words carefully. They mandated that compensation be credited for a ‘work day’ and not any other kind of day. Clearly, a ‘vacation day’ is not a ‘work day’ even though an employee is compensated for that vacation day.”

This conclusion is also found in other Board decisions. See Second Division Award 10112 (Tedford E. Schoonover).

In order to ensure that arbitration is truly final and binding, the Board highly values the concept of stare decisis which holds that prior decisions regarding the same parties and similar facts are controlling precedent. In light of earlier Board rulings that single vacation days do not qualify as compensation for workdays as required by

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the National Holiday Agreement, the claim for holiday pay for December 24, 25 and 31, 2003, as well as January 1, 2004, must be denied.

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 31st day of July 2009.