

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39932
Docket No. MS-40054
09-3-NRAB-00003-070263

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Robert E. Conti

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“A brief description of the dispute is the fact that the National Railroad Passenger Corporation (Amtrak) has procedurally flawed their answers to the Transportation Communications International Union, however, if the claim is to be decided on its merit's the NRPC has been unjustly omitting compensation from their employee's earnings when that particular employee works on a holiday. The compensation missing is in the form of a code 1 which stipulates an employee receives eight hours (8) compensation for eight (8) hours work.

The remedy the Transportation Communications International Union District 1089 is seeking is a days pay per for each of the holidays (Memorial Day and Independence Day) which were outlines in our original dispute date July 22, 2003, which also stated it is to continue for each and every holiday thereafter.”

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 claim, dated July 17, 2003, received by the Carrier on July 22, 2003, is ambiguous as to whether it was filed by the Organization or by the Claimant as an individual. The claim maintained:

“The Carrier continues to pay an employee a holiday in lieu of his regular days pay and the employee involved continues to be 8 hours short in his/her pay check. Carrier fails to remedy this situation. . . .”

The claim further requested that the Carrier produce its payroll records for the holiday weeks in question.

By letter dated July 30, 2003, the District Manager responded by producing payroll records for the Claimant, arguing that the claim was improper because it did not name specific employees allegedly harmed and maintaining that the Claimant was properly paid for the weeks in question. The Claimant appealed to the Division Manager Labor Relations contending that the payroll records produced on their face demonstrated that the Claimant was denied eight hours' pay for each of the weeks in question because they failed to reflect a code 1 for a regular day's pay for each of the holidays. By letter dated November 13, 2003, the District Manager Labor Relations denied the claim, arguing that the claim was improper as it amounted merely to a demand for payroll records rather than a claim for specific allegedly harmed employees and for the reasons noted in the first level declination and in the declination of a similar claim which had been filed for December 24 and 25, 2002. The Claimant then appealed to the Director Labor Relations alleging that the Carrier's prior responses had failed to properly answer the claim and, consequently, the Carrier was procedurally in default. The Director Labor Relations denied the appeal for reasons given at the lower levels.

As indicated above, it is ambiguous whether the claim was filed by the Organization or by the Claimant as an individual. The Carrier appears to have treated it as an individual claim and we treat it similarly.

The Claimant contends that the Carrier's answers to the claim are procedurally defective. We are unable to agree. Although the Carrier's answers were brief, they clearly communicated the Carrier's positions that the claim was improper because it failed to name specific claimants allegedly harmed and that with respect to the individual Claimant, payment for the weeks containing the Memorial Day and Independence Day holidays in 2003 was proper. Furthermore, when considered as an individual claim for the Claimant, we are unable to agree with the Carrier that the claim was procedurally improper. Accordingly we proceed to the merits of the claim on behalf of the Claimant as an individual for alleged improper payment for the two weeks in question.

The record reflects that Memorial Day, May 26, 2003, was a rest day for the Claimant. He received eight hours of holiday pay for that day as well as regular straight time pay for the five days he worked that week. Thus, even under the Claimant's interpretation of the Agreement, the Claimant was properly paid for the week containing Memorial Day 2003.

The week containing Independence Day 2003, reflects that the Claimant worked on the holiday, July 4, 2003. He received eight hours of holiday pay and eight hours at the overtime rate for working on the holiday. The Claimant contends that he also should have received eight hours of straight time pay and that the failure to provide such payment effectively reduced his workweek below five days in violation of Rule 4-A-5.

Rule 4-A-5 provides:

"Nothing in this Agreement shall be construed to permit the reduction of work days for regularly assigned employees below five (5) per week, except that this number may be reduced in a week in which holidays specified in Rule 4-A-3 occur within the five (5) days constituting the work week, to the extent of such holidays. This guarantee applies to the employee and not to the position."

“Fourth of July” is one of the holidays specified in Rule 4-A-3. During the workweek containing July 4, 2003, the Claimant was paid for four workdays and for the July 4 holiday. In other words, all the Carrier did was reduce his workweek to the extent of the holiday, something expressly permitted in Rule 4-A-5. The Claimant did work on July 4, 2003, and he was compensated eight hours at premium rates in addition to the eight hours of holiday pay. His claim that he is entitled to a third payment of eight hours for the same day has absolutely no support in the Agreement.

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 August 2009.