

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40435
Docket No. MW-40352
10-3-NRAB-00003-080169**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it recovered and refused to allow the Christmas Eve, Christmas Day, New Year’s Eve and New Year’s Day holiday pay to Messrs. J. Dolbeare, R. Dalbey, B. Deihl, T. Sigler and R. Beveridge for the dates of December 25 and 26, 2005 and January 1 and 2, 2006 (System File C-06-150-020/8-00446-006).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Dolbeare, R. Dalbey, B. Deihl, T. Sigler and R. Beveridge shall now each be reimbursed for the Carrier’s improper payroll deduction as follows: ‘*** Claimant Dolbeare is entitled to \$586.72; claimant Dalbey is entitled to \$628.96; claimant Deihl is entitled to \$586.72; claimant Beveridge is entitled to \$640.16 and claimant Sigler is entitled to \$549.92. . . .’”**

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 Organization filed the instant claim on behalf of the Claimants and contends that the Carrier violated the Agreement when it refused to allow holiday pay for December 25 and 26, 2005 and January 1 and 2, 2006.

According to the Organization, the Claimants were on scheduled vacation during the relevant time period in November and December 2005 as evidenced by their pay stubs. The Carrier initially paid the Claimants for the four holidays, but subsequently sent the Claimants a letter of recoupment dated March 9, 2006, which stated that they were not entitled to receive holiday pay for December 25 and 26, 2005 and January 1 and 2, 2006 because they had been furloughed in early December 2005.¹

The Organization asserts that the Claimants bid on and were assigned to Production Crew 3 and, in accordance with the Agreement, the Claimants were entitled to vacation based on their respective years of service. According to the Organization, the Claimants scheduled their 2005 vacations at the gang orientation in early 2005. The Claimants were not sharpshooting to obtain holiday pay. Each Claimant began his scheduled vacation prior to the gang being furloughed for the season. The Organization asserts that the Claimants fully satisfied the requirements for holiday pay set forth in the National Holiday Agreement in that they had compensation for service credited to 11 or more of the 30 calendar days immediately preceding the holidays. As the Board recognized in Third Division Award 37989, the Claimants' vacation days count towards qualifying days for holiday pay. Accordingly, this claim should be sustained.

The Carrier contends that the Organization did not meet its burden of proof in this case. The Claimants were all furloughed and, therefore, they did not meet the requirements for holiday pay as set forth in the Agreement. The Carrier contends that none of the Claimants were on scheduled vacation and any vacation still owed for 2005 was paid in a lump sum. They performed no compensated

¹ Claimants Dalbey and Deihl were furloughed on December 2, 2005; Claimants Beveridge and Sigler were furloughed on December 9, 2005.

service while on furlough. Based on these factors, this claim should be denied, the Carrier submits.

After careful review of the record in its entirety, we find that the Organization met its burden of proving that the Carrier violated the Agreement when it recouped holiday pay for the dates in question. The Carrier did not satisfactorily refute the claim and evidence that the Claimants were observing their scheduled vacation at the time that they were furloughed. The Board has previously held that vacation can be used to qualify for holiday pay. Third Division Award 37989. The Carrier has not established that the Claimants were attempting to become eligible for holiday pay to which they were not otherwise entitled by claiming a portion of the furlough period as vacation time. Because the Claimants were off on vacation and were compensated for more than 11 of 30 calendar days preceding the holidays, the Board finds that the claim for holiday pay for December 25 and 26, 2005 and January 1 and 2, 2006 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 14th day of May 2010.