

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42400
Docket No. MW-42091
16-3-NRAB-00003-130007**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to pay Ms. L. Schmitz for the 2011 Fourth of July Holiday (System File B-1161C-101/1557714 CNW).**
- (2) As a consequence of the violation referred to in Parts (1) above, Claimant L. Schmitz shall now be paid for eight (8) hours at her 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.

Claimant L. Schmitz established and holds seniority within the Bridge and Building (B&B) Subdepartment as a Bridge Tender. On the dates leading up to the instant dispute, she was regularly assigned to Gang 3389 in District B-7 and her normal tour of duty was Wednesday through Sunday.

Claimant worked her regular assignment without issue on June 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19 of 2011. However, sometime after the conclusion of her work day on June 19, 2011, Claimant sustained a personal injury. The Carrier thereafter removed and withheld Claimant from her regular assignment for several months, ultimately allowing her to return to service on September 2, 2011.

The issue in the instant case is relatively straightforward, and involves whether Claimant should have been paid for the 4th of July Holiday. The relevant rule is as follows:

“(b) A regularly assigned employee shall qualify for the holiday pay provided in paragraph A 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. If the holiday falls on the last day of a regularly assigned employee’s workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holiday or pay in lieu thereof provided for in paragraph (b) above, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service pending the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, noncompliance with a union shop agreement, or disapproval of application for employment.”

According to the Organization, Claimant's Medical Leave of Absence (MLOA) included the July 4th Holiday. Because she was on an MLOA, Claimant was not a regularly assigned employee, and therefore should have been paid for the holiday because, as is uncontested, she worked 11 or more of the 30 calendar days immediately preceding the holiday. Because Claimant was other than regularly assigned, she should be compensated for the holiday. As a result of the Carrier's actions, the Organization requests compensation for Claimant's lost opportunities.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends, and the documentation supports that during her MLOA, Claimant continued to be regularly assigned to Gang 3389. Therefore, she can only be compensated for the holiday if she works the workday immediately before and immediately after the holiday. It is clear that she did not do so. The Carrier argues that the Organization must prove that Claimant was not regularly assigned. It has been unable to do so. Therefore, the Carrier requests that the instant Claim be denied.

In the instant case, this Board cannot find that the Organization has been able to meet its burden of proof to show that Claimant should have been compensated for the holiday. The Carrier provided sufficient evidence to show that Claimant remained assigned to her regular Gang during her MLOA. The Organization contends that this constitutes being "other than regularly assigned" and therefore entitles Claimant to be compensated for the holiday because she worked 11 days in the 30 days immediately before the holiday. However, this Board cannot find that the Organization has met its burden of proof to show that Claimant should be paid for the holiday. It has been unable to substantially rebut the Carrier's position, and because Claimant did not work on the days immediately before and after the holiday, she is not entitled to compensation for said holiday.

Therefore, in the instant case, we cannot find that the Carrier acted unreasonably in denying Claimant payment for the holiday. The claim is 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 October 2016.