

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44201
Docket No. MW-45506
20-3-NRAB-00003-190322**

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

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly compensate Mr. A. Bojorquez for the December 24, 2017 Christmas Eve holiday (System File B-1819D-203/USA-BMWED_DM&E-2018-001238 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Bojorquez shall now ‘... be compensated for ten (10) hours of Holiday compensation at his respective position rate of pay on date of violation.’”**

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 Carrier and Organization are parties to the following holiday pay provision set forth as Rule 19 of their Agreement:

“RULE 19 – HOLIDAYS

1. Employees working under this Agreement will be eligible for eight (8) hours of pay at the straight time rate of their position for the following holidays. The Company will advise employees as to the actual dates in each calendar year on which these holidays will be observed and for which holiday pay will be authorized.
 - a. New Year’s Day (January 1)
 - b. President’s Day (Third Monday in February)
 - c. Memorial Day (Last Monday in May)
 - d. Independence Day (July 4)
 - e. Labor Day (First Monday in September)
 - f. Thanksgiving (Fourth Thursday in November)
 - g. Day after Thanksgiving
 - h. Christmas Eve (December 24)
 - i. Christmas Day (December 25)
 - j. New Year’s Eve (December 31)
2. Holiday pay will be calculated based on the straight time pay rate (as of the date of the holiday) times the number of regularly scheduled hours the employee would have otherwise worked on that day.
3. To be eligible for holiday pay, employees will be required to be available or perform compensated service on the regularly scheduled work day before and after the holiday in order to qualify for said holiday pay. Excused absences will be considered to have met the eligibility requirements for holiday pay. For other than regularly assigned employees, work on eleven (11) of the proceeding thirty (30) calendar days will constitute eligibility for the holiday.
4. Employees who are required to perform compensated service on one of the recognized holidays will receive eight (8) hours of holiday pay at the straight time rate plus pay at one and one-half times their straight time rate for the hours worked on the holiday.

5. If an observed holiday falls on a Sunday, the day observed by the nation will be the day observed under this Agreement. When Christmas Day and New Year's Day fall on Sunday and are observed Monday, then Sunday shall be considered the holiday for Christmas Eve and New Year's Eve. If one of the above listed holidays falls on Saturday, the employee shall receive the appropriate holiday pay for that day."

In December 2017, the Carrier initially scheduled the Christmas Eve and Christmas Day holidays to be observed on Sunday, December 24, 2017 and Monday, December 25, 2017. However, the Carrier subsequently altered the schedule so that these holidays were observed on Monday, December 25, 2017 and Tuesday, December 26, 2017. Because the Carrier altered the holiday to be observed on Monday and Tuesday instead of Sunday and Monday, the Organization filed the instant claim dated February 22, 2018. It asserted employees should have been able to observe the Christmas holidays on Sunday and Monday and been allowed to work on Tuesday, December 26, 2017. Consequently, the Organization asserted that the Claimant should have received pay for the holiday that fell on Sunday with no extra day off and that the Carrier's decision to observe the holiday on Tuesday denied the Claimant one (1) work day he was otherwise entitled to.

The Carrier denied the claim, and this Board finds that its denial is supported by the clear and unambiguous language of Rule 19. Thus, Rule 19 para. 1 expressly provides that "[t]he Company will advise employees as to the actual dates in each calendar year on which these holidays will be observed and for which holiday pay will be authorized." Furthermore, paragraph 4 of the Agreement's preamble provides that "[t]he BMWED affirms the long-standing principle that the Company retains the authority to assign work and manage its business according to its best judgment so long as its actions are not specifically restricted or in direct violation of this Agreement." The Carrier's decision to schedule the Christmas Eve and Christmas Day holidays on December 25 and December 26, 2017 was consistent with this contractual authority.

The Organization's contention that Rule 19 para. 5 obligated the Carrier to schedule Christmas Eve on December 24 and Christmas Day on December 25 is not supported by such language. Paragraph 5 merely provides an exception to the Carrier's unilateral authority to schedule holiday observance dates in situations where Christmas Day and New Year's Day "fall on Sunday and are observed on Monday." Here,

Christmas Day fell on Monday – not Sunday. Therefore, paragraph 5 does not apply to the circumstances present here.

Accordingly, for all these reasons 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 30th day of September 2020.