

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44248
Docket No. MW-45561
20-3-NRAB-00003-190418**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to compensate Messrs. C. Delano and C. Snow for holidays on December 24, 25 and 31, 2017 and January 1, 2018 (System File C-18-P018-4/ 10-18-0111 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Delano and C. Snow shall be compensated for the four (4) days of holiday pay at their respective rates 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.

On Thursday, December 14, 2017, both Claimants were withheld from service pending the result of a disciplinary investigation for a serious rule violation. The disciplinary investigation was held on Thursday, December 21, 2017, and discipline was assessed on Friday, January 12, 2018. Claimant Delano was issued a 30-day actual suspension commencing December 13, 2017 and concluding on January 11, 2018. He returned to active service performing compensated service on his regularly assigned grinder operator position on Monday, January 15, 2018. Claimant Snow was dismissed.

Section 3 of Appendix B, states in pertinent part:

“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. If the holiday falls on the last day of the 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.

Except as provided in the following paragraph, all others for whom holiday pay is provided in Section 1, hereof, shall qualify for such holiday pay is on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service;

NOTE: “Available” as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

For purposes of Section 1, other than regularly assigned employees who are relieving regularly assigned employees on the same assignment on both the work day preceding and the work day following the holiday will have the workweek of the incumbent of the assigned position and

will be subject to the same qualifying requirements respecting service and availability on the work days preceding and following the holiday as apply to the employee whom he is relieving.”

The Carrier maintains that neither employee had compensated services credited to the workdays immediately preceding and following the holidays in question. It contends the Claimants were properly disallowed 32 hours holiday pay (eight hours per day for four holidays) for December 24, 25, 31, 2017 and January 1, 2018 when they failed to meet the holiday qualifying criteria for regularly assigned employees under Section 3 of the Nonoperating (M of W) National Holiday Provision (Appendix B of the Agreement).

The Organization takes the position that since the Claimants were withheld from service and unable to work and receive compensation, their status had changed from ‘regularly assigned’ to ‘other than regularly assigned’ for purposes of qualifying for holiday pay. The Organization relies on this provision:

“APPENDIX B

NONOPERATING (M of W) NATIONAL HOLIDAY PROVISIONS

The following represents a synthesis in one document, for the convenience of the parties, of the current Holiday provisions of the National Agreement of August 21, 1954 and amendments thereto provided in the National Agreements of August 19, 1960, November 20, 1964, May 17, 1968, February 10, 1971, June 16, 1976 and December 11, 1981, implementing Article III-Holidays- of the January 29, 1975 National Agreement, with appropriate source identification. This is intended as a guide and is not to be construed as constituting a separate agreement between the parties. If any dispute arises as to the proper interpretations or applications of any provision, the terms of the appropriate agreement shall govern.

Section 1.

Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated

employees shall receive eight hours' pay at the pro rata rate for each of the following enumerated holidays:

New Year's Day	Labor Day
President's Day	Day After Thanksgiving Day
Good Friday	Thanksgiving Day
Memorial Day	Christmas Eve (the day before Christmas is observed)
Fourth of July	Christmas Day
	New Year's Eve (the Day before New Year's Day is observed)

(ART. II-HOLIDAYS-Section 2(a)-2/10/71 Agreement and Section 2-6/16/76 Implementing Agreement. 12/11/81 National Agreement) * * *

- C. Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays 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 of continuous active service preceding 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, non-compliance with a union shop agreement or disapproval of application for employment.'"

The Carrier counters that there was no triggering event, such as job abolishment or exercise of seniority which would result in the Claimants being furloughed. In its view, this is required for an employee to be treated as 'other than regularly assigned.' Since the Claimants were not furloughed, they could not be treated as 'other than regularly assigned' employees; both retained their regular assignments and thus, were 'regularly assigned' employees.

The Organization submits that the Carrier never disputed the fact that compensation was paid to the Claimants and credited to at least eleven (11) of the thirty (30) calendar days immediately preceding the Christmas Eve, Christmas Day, New Year's Eve and New Year's Day holidays in question. Moreover, there is also no dispute that the Claimants both have an established seniority date for at least sixty (60) calendar days. It concludes the Claimants satisfied both conditions relative to the holidays in question and therefore should have been compensated for the four holidays in question. The Claimants could not work on the workdays preceding and the workdays following said holidays because of the actions of the Carrier, not by their own choice. Even if the Claimants did not work on the workdays preceding and the workdays following the above-cited holidays due to the actions of the Carrier, they clearly worked on eleven of the previous thirty calendar days immediately preceding these holidays; therefore, this would clearly qualify the Claimants to receive their four days of holiday pay and they should be properly compensated for these holidays.

We do not agree. We find that both Claimants remained in the status of "regularly assigned employee" during their time of removal pending disciplinary action. This is particularly established by the fact that following suspension, Claimant Delano returned to his regularly assigned position of grinder operator. There was no bidding. There was no reassignment. There was no change of status. Were Snow to be reinstated, it would be to his regular assignment as well. There was no evidence of any change of assignment for either employee.

This factual conclusion accords with applicable precedent. Third Division Award 30207 (Goldstein) is controlling. In that case, the Board adhered to its established definition of a 'regularly assigned employee' within the meaning and application of the Appendix B:

"Precedent awards on this subject have concluded that a "regularly assigned employee" is one who is assigned to and identified with a specific position for indefinite duration, subject only to displacement by a senior employee or as a result of the job being abolished in accordance with the Agreement. A 'regularly assigned employee' is distinguished from an extra or furloughed employee temporarily filling a position owned by an absent employee due to vacation, sick leave, etc. See Third Division Awards 12180, 14325, and 15894."

Award 31437 is consistent with this holding, finding that an employee on medical leave held his status as a regularly assigned employee. We discern no rationale which would support a deviation from the concept that aside from furlough, an employee retains a regular assignment while temporarily away from work.

The Claimants were assigned to specific positions on welding gang TRWX1957 headquartered in Omaha, NE both prior to and following holidays occurring in December 2017 and January 2018. These assignments were not changed. It follows that they were 'regularly assigned employees' and their eligibility for holiday pay is controlled by Appendix B.

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 23rd day of October 2020.