Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44965
Docket No. MW-46999
23-3-NRAB-00003-210887

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)
(-Northeast Corridor

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to compensate Messrs. K. Dolbec, C. Polanco and J. Batista for the Fourth of July Holiday, July 4, 2020 (Carrier's File BMWE-159140-TC AMT).

(2) As a consequence of the violation referred to in Part (1) above, Claimants K. Dolbec, C. Polanco and J. Batista shall now each be compensated for their loss of pay for the July 4, 2020 holiday at their respective rates of pay, including any other appropriate relief, making them whole in every way for any loss and that all lost credits and benefits normally due must be included."

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 Claimants have established and maintain seniority within the Carrier's Maintenance of Way and Structures Department. On the dates giving rise to the instant dispute in late June and early July 2020, the Claimants were observing a Carrier-mandated 14-day quarantine period in relation to potential exposure to the COVID-19 virus. The Claimants were paid 80 hours of pay at their respective straight time rates. The Fourth of July holiday occurred on Saturday, July 4, 2020, during the quarantine periods. The Carrier did not compensate any of the Claimants at the holiday rate for the Fourth of July holiday.

In a letter dated August 7, 2020, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated September 9, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Agreement was violated when the Carrier failed to compensate the Claimants for the Fourth of July holiday while the Claimants observed a Carrier-mandated 14-day quarantine period for COVID-19 related concerns. The Organization contends that the Claimants were prohibited by the Carrier from coming to work on the work dates surrounding the Fourth of July holiday.

The Organization contends that Rule 48 of the parties' Agreement identifies the Fourth of July holiday as a holiday for compensation purposes and which provides that employes will receive eight hours' pay at their applicable rate for the day.

Rule 48 of the Agreement provides:

(a) Subject to the qualifying requirements contained in paragraph (f) hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight (8) hours pay at the pro-rata hourly rate for each of the following enumerated holidays:

New Year's Day	**Labor Day**
Washington's Birthday	**Personal Holiday ***
Good Friday	**Veteran's Day**
Memorial Day	**Thanksgiving Day**
Fourth of July	**Christmas Eve**
	Christmas Day

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> **(f) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof, if compensation paid him by AMTRAK is credited to the workdays immediately preceding and fallowing 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 holiday.**

The Organization contends that the Claimants were credited compensation by the Carrier equal to 80 hours straight time pay on the dates immediately preceding and following the Fourth of July holiday in accordance with the Carrier's COVID leave plan. The Organization contends that the refusal to compensate the Claimants for the Fourth of July holiday while they were on COVID paid leave defeats the purpose of the policy, which was "to provide relief for employees who are sick or who need to be isolated due to COVID-19." Instead, the Carrier's policy punishes those employees who must take COVID leave over a period that includes a holiday. The Organization contends that the Carrier's policy disincentivizes employes to report COVID exposure.

The Organization contends that the Claimants were not on medical leave and thus the days they were observing the Carrier-mandated quarantine period constituted workdays. The Organization contends that Second Division Award 9977 interprets a different Agreement and is factually distinguishable from this case. The Claimants here worked the last day prior to the start of the Carrier-mandated quarantine and the first day following it.

The Organization contends that the question of whether the Claimants were available for work is immaterial, as they were credited compensation by the Carrier on the dates immediately preceding and following the Fourth of July holiday. The Organization contends that if the Claimants were unavailable, it was due to the Carrier's policy and not because they tested positive for COVID. The Claimants were medically fit to work during the period.

The Carrier contends that in the early days of a worldwide and unprecedented pandemic, it created a policy to prevent the spread of the potentially fatal virus. Thus, the Carrier contends that employees who tested positive for or were potentially exposed to COVID were required to quarantine for 14 days, as was recommended by the Center

for Disease Control ("CDC") at the time. The Carrier compensated those employees who quarantined under this policy 80 hours of pay at the straight time rate.

The Carrier contends that the Agreement does not require the Carrier to pay holiday pay when an employee is not qualified to work. The Carrier contends that while an employee is quarantined, the employee is medically unfit.

The Carrier contends that the Claimants were regularly assigned employees under Rule 48(f). The temporary designation of not medically qualified to work did not remove them from their assignments, and they returned to the same assignments. The Claimants received a payment totaling the equivalent of 80 hours of pay at their straight time rate, but they were not compensated for workdays, as they performed no work. The reference to "workdays" means actual service, not an equivalent payment.

The Carrier further contends that the Claimants were not available for service because they were not medically qualified to work. Just as with any other qualification, it is the Carrier's responsibility to set qualifications and to ensure that its employees can safely perform their duties.

The Carrier contends that the Organization has failed to show a violation of the Agreement because the Claimants were not medically qualified for service during the quarantine period, and were not performing work or available for service, on and surrounding the Fourth of July holiday on July 4, 2020. Failure to meet the burden of proof requires denial of this claim.

In the face of an unprecedented and highly dangerous pandemic, the Carrier took steps to incentivize its workforce to observe the CDC recommendations of isolating for 14 days after testing positive for or being exposed to the COVID-19 virus. The Carrier agreed to compensate employes who quarantined for these reasons 80 hours of pay at their regular straight-time rate. The question is whether that pay constitutes compensation credited to the workdays before and after the Fourth of July holiday as set forth in Rule 48.

There is no question that during the period of the quarantine, the Claimants did not perform any service for the Carrier. The Covid Paid Leave policy provided for 80 hours of compensation at the straight time rate, but was not credited to any workdays. Arbitral precedent has determined that a workday is a day on which the employee performs service and is compensated. For instance, a vacation day has been found not to be a workday, even though the employee would receive compensation for the day.

Second Division Award 10112; Award 60 of Public Law Board 6779. Thus, we find that the days that the Claimants were quarantining and not performing duties for the Carrier were not workdays, as used in Rule 48 (f).

Additionally, we find that the Claimants were not "available for service" on the quarantine days, as they had been found medically unfit to work by the Carrier due to a COVID exposure. The Carrier cites Third Division Award 44769 for the proposition that the Carrier has the authority to take prudent and appropriate action to protect the public health. Requiring an employee who had the potential to spread a deadly virus to stay away from work until it was clear that he was not contagious was sensible and required by the CDC guidelines. Until it was known that an employee who had been exposed to COVID-19 would not spread it to his coworkers, the employee was properly considered to be medically unfit to report for service. Thus, the Claimants did not qualify for Holiday pay on the Fourth of July under either provision of Rule 48(f). The claim must be 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 24th day of May 2023.