PUBLIC LAW BOARD NO. 2206

AWARD NO. 47

CASE NO. 29

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that: (System File P-P-377C).

(1) The Carrier violated the Agreement when failing to properly compensate Secti-nman Richard L. Gill for Christmas Eve and Christmas Day Holidays.

(2) That Richard L. Gill now be allowed twelve (12) hours and forty (40) minutes pay at his respective sectionman pro rata rate of pay for violation referred to in Part One (1) of this Claim.

OPINION OF BOARD:

Claimant was regularly assigned as an hourly rated Sectionman with a Monday-Friday workweek at Lind, Washington. For the first half of December 1977 he worked and was compensated at his regular hourly rate. From December 19-30, 1977 the monthly rated Section Foreman with Monday-Friday workweek at Lind, Washington went on vacation and Claimant, as the senior qualified employe at the location, was assigned by Carrier temporarily to fill that vacation vacancy. There is no reasonable doubt on this record that the assignment was made by Carrier pursuant to Rule 19-B(2), reading as follows:

"RULE 19. TEMPORARY VACANCIES AND VACATION RELIEF NOT BULLETINED

* * *

"B. Vacation relief may be provided by assigning qualified employes in seniority order in the following order of preference before other employes will be assigned to perform vacation relief on an involuntary basis:

"(1) Employes holding seniority but unassigned in the classification or seniority rank of the vacationing employe who are working at the location or on the gang where relief is to be provided.

"(2) Employes holding seniority in lower classification and seniority ranks in the seniority sub-department of the vacationing employe who are working at the location or on the gang where relief is to be provided.

"(3) Employes who have filed written requests under Section A of this rule who are not working at the location or on the gang where relief is to be provided, and who will be subject to Rules 35 and 36."

We find specifically that the temporary vacation assignment was made under the upgrading provisions of Rule 19-B(2) and, accordingly, the written request requirements of Rule 19-B(3) was not applicable. See Award 3-22305.

For his service as temporarily upgraded Foreman during the last two weeks of December 1977, Claimant was paid $599.11, or one-half of the applicable monthly rate for that Foreman's position. The contractual holidays of Christmas Eve and Christmas Day occurred during that period when he was so employed as a Foreman. Under Sections 1 and 3 of the National Holiday Agreement, as amended, each qualified hourly rated employe

is entitled to eight hours of pay at the pro rata hourly rate for each holidy. Under Section 2 of this same Agreement, the compensation for monthly rated employes has holiday pay "built in", i.e., the monthly rate has been increased by 6 2/3 hours (80 hours annually for holiday pay divided by 12 months). Thus, for the latter half of December 1977 Claimant's monthly-rated compensation included three hours and 40 minutes attributable to "holiday pay".

The Organization on March 6, 1977 filed the present claim alleging that Claimant was entitled under the Agreement to receive eight hours holiday pay for Christmas Eve and eight hours holiday pay for Christmas Day, for a total of sixteen hours holiday pay at the pro rata hourly rate of the Section Laborer's position he usually held. Apparently, the Organization conceded that he had already received three hours and 40 minutes of holiday pay at the monthly rated compensation because the damages demanded was "12 hours and 40 minutes at his respective Sectionman's rate of pay". Carrier denied the claim at all levels of handling and ultimately it was appealed to our Board.

Most of the antecedent awards furnished by Carrier dealt with employes working temporarily on a monthly rated position under an Agreement different from the one governing their regular hourly employment. Cf. Awards 3-19632; PLB 1366-44 and PLB 298-274. In our case, the two jobs worked by Claimant both were subject to the rules of the same BN/BMWE Agreement. There are two antecedent awards dealing with cases like our own, but they go in opposite directions, providing a virtual stalemate in the applicable cited authorities presented on this record. The first of those cases, Award 2-2485, was cited by Carrier, as follows:

"The claimant, an electrician, was temporarily assigned to a foreman's position during the week of November 23, 1954. During that week he was paid at the foreman's rate of pay which is greater than that of an electrician. Thanksgiving Day, a holiday, was November 25, 1954. Electricians are entitled to holiday pay for that day. Foremen do not receive holiday pay. The claimant received the foreman's higher rate of pay and also wants the holiday pay received by electricians. The agreement does not provide for such dual payment. Since the claimant was working as a foreman that week, and since he was paid the foreman's rate of pay he cannot now reasonably contend that for one day in the week he should be paid at some other rate."

The only other clearly applicable decision presented on this record is Award 3-19756, cited by the Organization, as follows:

AWARD 19756:

Our opinion herein is not to be construed as allowing an employee double pay for the same day. However, in view of the difference in methods of holicy payments to employees in monthly rated positions from those in hourly rated jobs, situations may, and do, arise, where depending on the length of the transfer to the monthly rated position, an employee has been compensated for a full day's holiday pay. In such event, he should not also receive another day's pay for his hourly rated position. If, however, the added hourly pay in the monthly rated position, is less than eight hours, the employee is entitled to receive payment for the hours not paid for at his hourly rated wages. (11972)

We have reviewed both of the countervailing decisions and find that each must be rejected, in whole or in part, for failing to recognize important distinctions between the hourly rated pay and the monthly rated compensation with resultant differences in the calculation of and entitlement to holiday pay. In Award 2-2485, the Board held (unlike the present case)

that "Foreman do not receive holiday pay". The facts in that case indicated that the monthly rated compensation of Foreman did not include a component attributable to holiday pay. Accordingly, the decision in that case is inconsistent and logically unsound when it premised its denial of the claim upon an assertion that the hourly rated holiday pay would have constituted a "dual payment" of the premium pay. On the other hand, we find sound the underlying theme of Award 2-2485 that an employe who is involuntarily temporarily upgraded is not entitled to a windfall or unjust enrichment in holiday pay.

Award 3-19756 is closer to the mark on its facts and in its fundamental analysis, but falls short in its last sentence by "mixing apples and oranges" with respect to computing and allocating the holiday pay component of the regular hourly rate and the monthly rated earnings of the Claimant.

We hold specifically that an employe involuntarily assigned under Rule 19-B to fill a temporary vacation vacancy should neither be unjustly enriched nor placed in a worse position in terms of holiday pay earnings than if he had not been involuntarily assigned to fill the vacancy. Essential to a determination and application of this principle is the ability to isolate and identify in the monthly rated earnings that component or amount attributable to holiday pay. Such a determination is possible in the present record, since we know that the holiday pay of the hourly rated position is based upon eight hours for each holiday at the pro rata rate and the holiday pay component of the monthly rated compensation is premised upon an additional six hours and 40 minutes per month at a rate predicated expressly for that purpose to be equivalent to one (1) hour's worth of the monthly rate. Accordingly, this permits the calculation and comparison of the dollar value of the holiday pay received, respectively, by the hourly rated and the monthly rated employe.

Under our holding herein, Claimant is entitled to be made whole if the holiday pay he received as an involuntarily upgraded temporarily assigned monthly rated Foreman was less than the holiday pay he would have received if he had not been so assigned by Carrier under Rule 19-B.

Although we do not have before us the respective hourly rate and the hourly factored monthly rate, it appears evident that three and one-third hours at the monthly rate was less than sixteen hours at the hourly rate. Accordingly, we shall sustain the claim for the difference between those two amounts. Carrier is directed to calculate the dollar value of three hours and 20 minutes worth of the monthly rate for the Foreman's position, subract that amount from the dollar value of sixteen hours at the pro rata hourly rate for the Sectionman's position, and compensate Claimant for the difference between those amounts.

AWARD

Claim sustained to the extent indicated in the Opinion.

Walter Hodgman
Carrier Member

F. N. Franke
Employe Member

Dana E. Eischen, Chairman

Date: 10/15/