

PUBLIC LAW BOARD NO. 3568

Case No. 13

PARTIES TO DISPUTE: AMERICAN FEDERATION OF RAILROAD POLICE, INC.
VS.

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM: Failure of the Carrier to pay the above named Police Officer (R. Tebaldi) eight hours holiday pay pursuant to Rule 13 of the collective bargaining agreement and past practices of the Carrier.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimant is a full time Police Officer in Carrier's employ, stationed at Newark, New Jersey. Claimant worked his regular tour of duty on November 10, 1981 and November 11, Veterans' Day, a recognized holiday pursuant to the Agreement. Claimant's position was abolished effective 12:01 a.m. on November 12. Pursuant to Rule 17, Claimant exercised seniority on November 14, 1981. He did not work on November 12, 1981. Carrier did not compensate Claimant for holiday pay for the Veteran's Day Holiday.

As a result of Carrier's action, the Organization filed this claim. Carrier timely denied it. Thereafter, it was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier violated Rule 13(b) of the Agreement. That rule and Rule 17 read, in relevant part:

RULE 13
HOLIDAYS AND PERSONAL LEAVE

- B. A regularly assigned employee shall qualify for the holiday pay provided in Section A hereof if compensation paid him by the Corporation 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 preceding the holiday.

1. Regularly assigned employees shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- a. Compensation for service paid by the Corporation is credited; or
- b. Such employee is available for service.

NOTE: Compensation paid under sick leave rules will not be considered as compensation for purposes of this Rule.

* * *

RULE 17
DISPLACEMENT

- A. Subject to the provisions of Rule 15, Section G, a police officer must within seven (7) days displace a junior employee by the exercise of his seniority in the following cases or forfeit all seniority except as hereinafter provided:

1. When the position to which he is regularly assigned is abolished.

* * *

The Organization points out that Claimant worked on the day immediately preceding the holiday and on the holiday itself. Under the Agreement, then, Claimant was only required to work on November 13 to be entitled to holiday pay. However, the Organization notes, Claimant's position was abolished through no fault of his own at 12:01 a.m. on that day. He was ready, willing and able to work on November 12. Thus, the Organization argues that Carrier should not deny Claimant holiday pay as a result of its own act.

In addition, the Organization asserts that Claimant acted promptly in selecting a new assignment pursuant to Rule 17. His new job entailed rest days of November 14 and 15. Claimant began work on November 16. Thus, the Organization concludes that Claimant should not be prejudiced for promptly exercising his displacement rights pursuant to Rule 17. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, denies that it violated the Agreement. It points out that Rule 13 requires an employee to work immediately after a holiday in order to be entitled to holiday pay. Claimant did not work on November 13. As such, Carrier argues, it properly denied the Claimant holiday pay. Therefore, it asks that the claim be rejected.

A review of the record evidence convinces us that the claim must fail.

To qualify for holiday pay an employee must either receive compensation for service or be available for service on the day following the holiday. It is undisputed that Claimant received no compensation for November 13, 1982.

Moreover, Claimant had ample opportunity to be available for service on that day. He was notified of his position abolition prior to November 12, 1982. He could have exercised his seniority in such a way as to be available for service on November 13, 1982. He did not. Thus, he did not meet either condition so as to qualify for holiday pay.

The Organization pointed out that Claimant had seven days to exercise his seniority. This is so. However, that period is provided in order to give Claimant a reasonable opportunity to choose an appropriate available position. It is not a guarantee that all other entitlements, such as holiday pay, will continue while Claimant decides which position would be best suited to his needs.

In sum, Claimant did not fulfill the conditions set forth in Rule 13 for holiday pay for November 11, 1982. Accordingly, and for the foregoing reasons, the claim must fail.

FINDINGS: The Public Law Board No. 3568 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 3568 has the jurisdiction over the dispute involved herein; and


That the Agreement was not violated.

AWARD:

Claim denied.


Ronald J. Davis, Employee Member


Kevin P. Connors, Carrier Member


Martin F. Scheinman, Neutral Member

Dated: April 2, 1985