AWARD NO. 25
CASE NO. 25

PUBLIC LAW BOARD NO. 4402

PARTIES TO DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it failed and refused to allow Sectionman C. R. Kelley holiday pay for Christmas Eve (December 24, 1986) and Christmas Day (December 25, 1986) (System File #10 Gr./DMWA 87-03-11)

2. The Claimant shall be paid eight (8) hours pay for each day, December 24 and 25, 1986, at his sectionman's rate of pay because of the violation referred to in Part (1) above.

OPINION OF BOARD

Claimant, an hourly rated sectionman, was furloughed at the close of his tour of duty on December 8, 1986 and remained in an other than regularly assigned status beyond the 1986 Christmas holiday. Christmas Eve and Christmas Day are designated holidays in the National Holiday Provisions. During the 30 days preceding Christmas 1986, Claimant actually worked nine days and was also compensated for Thanksgiving Day and the day after Thanksgiving Day - days that are also designated as holidays in the Agreement.

The relevant Agreement language (Section 1(C)) provides:

> Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employes 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 or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service ....

Claimant's request for holiday pay for Christmas Eve and Christmas Day was denied by the Carrier for reasons explained in its April 23. 1987 letter:

> Claimant was furloughed effective December 8, 1986. During the preceding 30 calendar days Claimant worked and was compensated for service on 9 days. In addition, claimant was given holiday pay for November 27 and 28, 1986. Claimant was not compensated for December 24 and 25, 1986, because he was other than regularly assigned and did not perform actual service on 11 or more of the 30 calendar days preceding the holiday. November 27 and 28, 1986, were holidays and not workdays.[1]

The question in this case is whether Claimant's being compensated for the two Thanksgiving holidays on November 27 and 28, 1986 can be considered as "compensation for service paid him by the carrier" so as to give Claimant 11 days within the 30 calendar days immediately preceding Christmas thereby entitling Claimant to holiday pay for the 1986 Christmas holidays.

The parties rely upon divergent authority for their positions.

The Organization relies upon Third Division Award 20725:

> The same issue has been before this Board on a number of occasions [Awards 11317, 16457 and 18261] ... In Award 18261 we said:
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> > The effect of these decisions is that the rule makes no qualification with respect to the source of the compensation paid by the Carrier and credited to the employes' regular work days immediately preceding and following the holiday. And since only one exception - that with respect to sick leave payments - is expressed, no other or further exceptions may be implied. Such decisions cannot be characterized as palpably erroneous; therefore, they provide valid precedent.
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> In this dispute, we shall reaffirm the principle that any compensation received by employes, regardless of source (except sick leave payments), is sufficient to qualify an employe for holiday pay under the compensation test of the Agreement cited supra. For this reason, the Claim must be sustained.

In Third Division Award 14816, also relied upon by the Organization (a vacation pay dispute rather than a holiday pay question), it was held:

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1 In its Submission at 3, the Carrier states that a "mistake in counting went uncorrected during the handling of the claim on the property" and argues that in any event, Claimant would only have 10 qualifying days as opposed to 11 even if the Organization's interpretation in this matter is found to be correct. That dispute of fact cannot be raised for the first time before this Board.

> Nothing in the Agreement ... requires that the Claimant actually renders service or works during the 30 calendar days period immediately prior to the holiday. All Claimant has to prove in this instance is that she had compensation for service paid her by Carrier credited to 11 or more days of the 30 calendar days immediately prior to the holiday in question.

See also, Third Division Awards 16983, 14674 supporting the Organization's position.

The Carrier relies upon the rationale set forth in Second Division Award 9908:

> The sole issue before this Board is whether holiday pay is "compensation for service" under Article II, Section 1(c) of the Non-Operating National Holiday Agreement. It is clear that such pay is *not* compensation for service and that the claim must fail. This is so for a number of reasons.
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> First, the language of that provision is clear and unambiguous. It requires that Claimants must have been compensated *for service* on eleven of the 30 calendar days immediately preceding the New Year's Holiday. (emphasis supplied) The term "service" can mean but one thing - actual work. Here, Claimants did not work on December 24 and 25, 1979. Thus, Claimants were not compensated "for service" on those two days.
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> Second, awards cited by Claimants are not relevant here. Those awards provide that vacation days are recognized as days for which "compensation for service" is granted. However, vacation days are earned as a result of the performance of work - a specified number of days in each of a number of years. Thus, vacation days *are* compensation for service except that the payment for such service is deferred until the employe takes his vacation. Thus, a vacation day cannot be equated to a holiday, on which no work, actual or deferred, has been performed.
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> * * *
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> ... Accordingly, since Claimants did not provide "service" on eleven or more of the thirty calendar days immediately preceding January 1, 1980, they are not entitled to holiday pay for that day.

We agree with the line of authority discussed in Third Division Awards 20725, 14816, 14674 and 16983. First, had the parties intended that an employee must "work" on a day to receive credit for that day in terms of computing the holiday pay entitlement, these sophisticated negotiators could have used that word rather than "compensation for service".

The word "work" cannot be read into the relevant language as was done in Second Division Award 9908.

Second, in Section 3 of the Agreement the parties specifically provided that "Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule". Given that the parties specifically addressed this exception, under standard rules of contract construction the failure to further except days where holiday pay was previously paid leads to the construction that such further exception was not intended.

Finally, we do not find that the Carrier's distinction between vacation pay and holiday pay is valid so as to require a denial of the claim. In order to receive vacation an employee must earn that benefit under the specified parameters of the Agreement. By the same token, in order to receive holiday pay, the employee must similarly qualify for that benefit by meeting the specific terms of the negotiated Agreement. Given that similarity and further given the strong line of authority supporting the Organization's position and for the other reasons discussed above, in this matter we find the Carrier's argument unpersuasive to change the result.

We must therefore sustain the claim.

AWARD

Claim sustained.

Edwin H. Benn
Neutral Member

E. J. Kallinen
Carrier Member

P. S. Swanson
Organization Member

Chicago, Illinois
April 15, 1990