

PUBLIC LAW BOARD 6396

Case No. 16
Award No. 16
Carrier's File No. 1291565
Organization's File No. 607
NMB Code 159
Claimant Hostler/Laborer C. T. Christner

PARTIES TO THE DISPUTE:

NATIONAL CONFERENCE FIREMEN &
OILERS, SEIU, SYSTEM COUNCIL NO. 15

AND

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

1. That in violation of the current Agreement, the Union Pacific Railroad Company (Denver and Rio Grande Western Lines) improperly adjusted the payroll of Mr. C. T. Christner, hostler/laborer, Denver, Colorado, by deleting pay of 1 hour and 9 minutes for September 2, 2001 and denied holiday pay for Labor Day, September 3, 2001.
2. That, accordingly, the Union Pacific Railroad Company (Denver and Rio Grande Western Lines) be ordered to compensate Mr. C. T. Christner for 9 hours and 9 minutes at the pro rata rate.

Findings:

Upon the entire record and all the evidence, this Board finds the parties herein to be Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction of the parties and over the dispute involved herein.

The Claimant works as a Hostler, Attendant Hostler at North Yard. On September 2, 2001, he reported to work as scheduled. He attended preliminary activities, including the start of shift safety meeting. Following that, the Claimant asked

and received permission from his supervisor to leave work because of an emergency. He had been in attendance for 1 hour and 9 minutes.

The Carrier deducted the 1 hour and 9 minutes from the Claimant's pay record and did not pay him for the September 3, 2001 Labor Day holiday after concluding that the reason the Claimant left work earlier on September 2, 2001 did not qualify as an emergency.

The Organization took exception to the Carrier's refusal to pay the Claimant and filed an appeal on his behalf. The claim was processed through the appropriate channels and is currently before this Board for review.

CARRIER'S POSITION

The Carrier argues the Claimant is attempting to "sharp shoot" the Agreement relative to holiday pay. They cite Section 3 of Supplement A of the Collective Bargaining Agreement which provides:

A regular 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.

They say the provision requires more than just a cameo appearance the day before or the day after a holiday in order to qualify for holiday pay. They cite Second and Third Division Awards which held that the intent of the language is not met by such intentional limited appearance.

They assert it is obvious the Claimant came to work with the intention of performing no actual service. They point out that the Claimant may have wanted to visit his cousin's son Adam in the hospital. However, the child had been admitted the day before and the Claimant did not have to report for work until 3:00 p.m. They say there was ample opportunity for the Claimant to visit the child in the morning before reporting to work. They say his claim that it was an emergency rings hollow.

The Carrier dismisses the cases cited by the Organization as distinguishable. They point out that in one case the employee had been sick two days before and attempted to work the qualifying day only to find he had to leave work. That is different than this case and others where the employee intentionally tries to circumvent the requirements of the Agreement. The second case, they say, also was distinguished because there was no indication the employee had intended to leave after staying only a sufficient time to receive compensation.

They direct the Board's attention to the facts in the instant case. They contend the Claimant was not notified while working that an emergency existed that required his presence. Secondly, the Claimant did not have to be at work until the second shift. Under the circumstances they say it is apparent the Claimant reported to work with the intention of leaving after a minimal amount of time. Moreover, the Claimant performed no service on September 2, 2001.

ORGANIZATION'S POSITION

The Organization maintains the Carrier erred when they deleted compensation from the Claimant's payroll of September 2, 2001 and declined to pay him for the September 3, 2001 holiday.

They contend the National Holiday Agreement provides for 11 recognized Holidays, including Labor Day. They argue an employee only needs to be compensated for the previous day or the day after the holiday in order to be eligible for holiday pay. They insist the Claimant performed service for 1 hour and 9 minutes the day before the holiday. He then only left work after receiving permission from his supervisor to be with a close cousin in a medical emergency. Moreover, they say, the Claimant received 7 hours 47 minutes of compensation the day after the holiday. Therefore, they argue, he is entitled to holiday pay.

They Organization reviews the Claimant's work on September 2, 2001. They say he reported to work at 15:00 hours and attended a safety briefing from 15:00 hours until 15:30 hours. He then worked from 15:30 hours until 16:09 hours when he only left

after receiving permission from his supervisor. The Organization asserts the Carrier does not refute it amended the Claimant's payroll records for September 2, 2001. They strongly disagree with the Carrier's contention that "just coming in for the morning line-up and Safety meeting does not equate to compensated service." They cite Second Division Award Nos. 7410, 8843, and 10033, which hold that any compensation the day before and after a holiday qualifies an employee for holiday pay. They argue the dissenting award from the Second Division, Award No. 9307, involved a case where it was evident the employee had been "sharp shooting" the rules. They insist the Carrier has not demonstrated that the Claimant had attempted to "sharp shoot" the rules in this case. He reported to work at his regular time and performed those duties normally a part of his regular assignment. They contend he then performed other services under supervision. Therefore, he performed compensable service. They point out that he was not disciplined for dishonesty and there is no dispute he was on the property and registered his time card to clock in and out. They maintain if there was any "sharp shooting" it was the Carrier who deleted his pay records and then denied holiday pay.

DECISION

It simply cannot be argued that the Claimant did not put in compensable time on September 2, 2001. He reported to work clocked in and at least attended a safety meeting. If this had been any other day, he would have been paid for that 1 hour and 9 minutes. It would not have been deducted from his regular eight hour pay day but would have been a part of it. Therefore, the Board sees no way that the Carrier was justified in deducting that amount from his pay check and it should be paid to the Claimant.

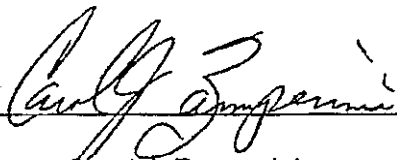
That having been said. This Board concurs with Second Division Award No. 9307. The intent of the language of the Agreement is that employees work the entire day before and after the holiday. True the language could be better written. However, there is no way there was mutual agreement that an employee only had to work a small portion of the day before and after a holiday in order to be eligible for holiday pay. That would be an absurd interpretation of the Agreement. If that were the intent the

Carrier would inevitably find themselves without employees shortly after the beginning of each shift the day before and/or after a holiday.

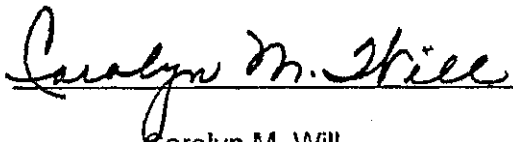
In this case, the evidence strongly supports the Carrier's contention that the Claimant was "sharp shooting" the rule. No one would argue he may have wanted to spend time with his cousin, however, there was no emergency. He could have spent the entire morning with his cousin and then fulfilled his obligation to the Carrier. The fact he was not summoned from work shows the Claimant came to work fully intending to leave after a short time. Admittedly, he may have been conflicted if he had to stay at work. Regardless, employees are conflicted every day because they have pressing needs to address but must attend work. If the employee was so conflicted that he felt he could not work, he had the option of not working and not receiving holiday pay.

AWARD

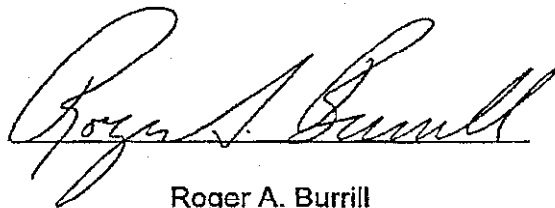
The claim is sustained in part and denied in part..



Carol J. Zamperini
Impartial Neutral and Chairperson



Carolyn M. Will
Carrier Member



Roger A. Burrill
Employee Member

Submitted this 28th day of June, 2002.