

81-19-175

PUBLIC LAW BOARD NO. 1844

AWARD NO. 66

CASE NO. 81

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when Track Foreman Dale Tenner at Merrillean, Wisconsin was not compensated for one (1) hour of service performed Tuesday, September 5, 1978 between 3:00 and 4:00 PM and Labor Day Holiday pay of eight hours on September 4, 1978. (System File 81-19-175)
- (2) That Claimant Dale Tenner now be allowed nine (9) hours pay at his straight time rate of pay for violation referred to in part one (1) of this claim."

OPINION OF BOARD:

Claimant is a monthly-rated Foreman working out of Merrillean, Wisconsin. September 4, 1978 was the Labor Day Holiday for that year. The following day, September 5, 1978, the BRAC engaged in a work-stoppage and claimant chose not to cross the picket line. He did appear on Carrier's property for one hour from 3:00 PM to 4:00 PM on September 5, 1978, however, after the strike was over. Carrier asserted that if he did so it was for reasons ~~other than~~ <sup>of</sup> his own and he performed no service that day. Claimant insists that he came to work in response to a call and did work for one hour on September 5, 1978. On the basis that Claimant performed no service on the day after the holiday,

Carrier deducted from his monthly pay the equivalent of two days' pay; representing September 4 and 5, 1978. In this claim Mr. McDonald seeks restitution of the holiday pay for September 4, 1978 and one hour's pay for September 5, 1978.

Since Claimant was a monthly-rated employee he, unlike daily-rated or hourly-rated employees, was not required to perform service on the work days before and after the holiday in order to qualify for holiday pay. See Awards 3-10681, 3-10682, 3-11552, 3-12292, and 3-18561. The cited Awards also hold that a holiday is not considered a work day in computing monthly rates of pay. Holiday pay was added to the monthly-rated employees' annual earnings in accordance with national agreements and divided by twelve to determine the monthly rate. Accordingly, no deduction should have been made by Carrier from Claimant's pay for the holiday on September 4, 1978.

With regard to the claim for one hour on September 5, 1978, the facts are in dispute as to whether the agent called Claimant shortly before 3:00 PM merely to inform him that the strike was over (as stated by Carrier); or whether the agent called Claimant to work for one hour (as stated by the Organization). The Board cannot resolve this factual dispute on the basis of the evidence presented by the parties. We note in passing that there is no claim before the Board for the seven hours prior to 3:00 PM on September 5, 1978.

Based upon all of the foregoing, the claim for one hour on September 5, 1978 is dismissed, but that portion of the claim for September 4, 1978 is sustained. Since there were twenty (20) assigned work days in September 1978 (not counting Monday, September 4, 1978, as a work day), the Claimant's compensation for September 1978 should be adjusted to allow him 19/20 of his regular monthly compensation.

FINDINGS:

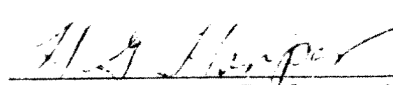
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

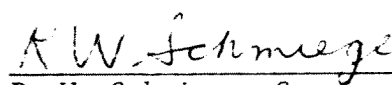
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was violated.

AWARD

Claim sustained in part and dismissed in part as indicated in the Opinion. Carrier shall comply with this Award within thirty (30) days of its issuance.

  
Dana E. Eischen, Chairman

  
H. G. Harper, Employee Member

  
R. W. Schmiede, Carrier Member

Dated: Feb 4, 1980