

PUBLIC LAW BOARD NUMBER 3530

Award Number: 53
Case Number: 53

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Welder, J. L. Anderson
727 Westside Boulevard, NW
Roanoke Virginia 24017

Claimant was denied Holiday Pay for February 21, 1983, Washington's Birthday. Employees request pay for eight (8) hours at the applicable rate of welder.

FINDINGS:

On March 4, 1983, the Organization filed claim on behalf of Claimant seeking holiday pay compensation for February 21, 1983 (Washington's Birthday).

The issue to be decided in this dispute is whether Claimant is entitled under the Agreement to holiday pay for February 21, 1983.

The position of the Organization is that Rule 42 of the Agreement entitles Claimant to the holiday pay requested. The Organization cites Appendix B of that Rule, under Section 1, stating "...each hourly and daily rated employee shall receive

eight hours pay...for each of the following enumerated holidays...Washington's Birthday." The Organization maintains that since Claimant worked a full day on February 22, 1983, he is clearly entitled under rule 42 to holiday pay for the preceding date.

The Organization further cites Article II, Section 3 of the August 21, 1954 Agreement (Amended by the 1960 Agreement), which states "A regularly assigned employee shall qualify for holiday pay...if compensation paid him by the Carrier is credited to the workdays immediately preceding and following each holiday..." The Organization maintains that Claimant was paid compensation by Carrier on February 18, 1983, the workday immediately preceding the holiday. The Organization therefore contends that since Claimant was paid compensation on the workdays immediately preceding and following February 23, 1983, he is entitled to the holiday pay requested. To further substantiate its position, the Organization cites Section 7 of the May 17, 1968 Agreement which states. "...The workdays and days immediately preceding and following the vacation period shall be considered the 'workday' and 'days' preceding and following the holiday..." The Organization contends that since Claimant's vacation period ended February 18, 1983, Section 7 indicates that Carrier must count the workdays immediately preceding/following the holiday for which Claimant was compensated. The Organization denies that February 11, 1983,

the date preceding Claimant's vacation, should be relevant for the purposes of this claim, since the holiday did not fall within the vacation period.

Finally, the Organization cites Section 2 of the 1954 Agreement which states, "Compensation paid under sick leave rules and practices will not be considered as compensation for purposes of this rule." The Organization contends that this section indicates that only "sick leave" compensation will not be considered "compensation", and that therefore paid vacation compensation would qualify as "compensation paid" under Section 3.

The Carrier's position is that Claimant is not entitled under Rule 42 to the requested holiday compensation. Carrier maintains that Claimant failed to qualify for the holiday pay because he missed the workday immediately preceding his vacation period and the holiday. Carrier contends that since Claimant missed work on February 11, 1983, the date immediately preceding his vacation (February 14-18, 1983), he lost entitlement to holiday pay for February 23, 1983. Carrier cites Section 4 of Appendix B which states, "The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes." Carrier argues that this section clearly indicates that the

workday immediately preceding the vacation period is relevant for qualification purposes, and that since Claimant missed work on that date (February 11, 1983), he lost entitlement to the holiday pay requested.

Finally, Carrier cites Section 2(i) and (ii) of Appendix B, stating "...[employees] qualify for such holiday pay if on the day preceding...the holiday they satisfy one or the other of the following conditions: (i) Compensation for service paid by the Carrier is credited; or (ii) Such employee is available for service." Carrier contends that this language indicates the intent of the parties was to require employees to render service or be available for service on the day preceding the holiday. Since Claimant was on vacation on that day (February 18, 1983), Carrier maintains that February 11, 1983 stands as the controlling date, (i.e. the date immediately preceding the holiday) and that Section 2 therefore bars holiday compensation due to the fact that no compensation was "credited" Claimant for that date.

After review of the record, the Board finds that the Organization's claim must be sustained.

Carrier relies on the language of Section 4 of Appendix B stating "The 'workdays'...immediately preceding...the vacation period shall be considered the 'workdays'...preceding...the

holiday for qualification purposes." Carrier's reliance on this provision is misplaced. Section 4 applies only when "...the...holiday...falls during an...employee's vacation period." The holiday in question fell on February 21, 1983, after the conclusion of Claimant's vacation. Therefore, we must find Section 4 inapplicable to the present claim. If the parties intended that Section 4 should apply to circumstances where the holiday immediately follows a vacation period, that language should be contained in the Agreement. Absent such language, we cannot infer that the parties intended such a result.

Appendix B, Section 1, outlines February 21, 1983 (Washington's Birthday) as a legitimate holiday for compensation purposes. Section 2 only requires that "compensation paid...by Carrier is credited to the workdays immediately preceding and following such holiday." Claimant was compensated for February 22, 1983, thus satisfying the second element. Further, we find that Claimant was "compensated" as per Section 2 on February 18, 1983, the workday "immediately preceding" the holiday. Section 2 does not require that the compensation be for actual "work performed" as Carrier allege. To the contrary, Section 2 indicates only that compensation paid by Carrier be "credited", which would certainly apply to vacation pay "credited" on February 18, 1983. Absent language in Section 2 indicating

that vacation pay may not be considered "compensation", we cannot conclude that such pay is excluded from the "compensation paid" requirement of Section 2.

AWARD

Claim sustained.

Nicholas Pinner
Neutral Member

J. A. Abbott Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 1-21-87