

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 417

PARTIES)
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TO)
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DISPUTE)
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**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on November 24, 2017, the Carrier failed to pay all employees assigned to team 6XT2 eight (8) hours Holiday pay. (System File S21186317/18-82073 CSX).
2. As a consequence of the violation referred to in Part 1 above, L. Wilkerson and all employees on T-2 team shall now be ‘... paid **eight (8) hours straight time each claimant** at their respective rate please advise of the pay period when said payment will be made.’ (Emphasis in original) (Employees’ Exhibit ‘A-1’).”

FINDINGS:

The Board, upon the whole record and all the evidence, finds that: the Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934. This Board has jurisdiction over this dispute involved herein. Parties to said dispute were given due notice of hearing.

STATEMENT OF FACTS:

Claimants consist of the Track Subdepartment within Maintenance of Way and Structures Department, categorized as Team 6XT2. This is a dispute regarding holiday pay pursuant to

Sections 6 and 14 of Appendix “S”. The Organization filed a claim on December 19, 2017. It was denied on July 10, 2018 by the Carrier’s Highest Designated Officer (HDO).

It is the Carrier’s position that there was no violation because the group failed to assign a vote taker and to hold a vote pursuant to observing the Thanksgiving 2017 holiday on Thursday, November 23, 2017 and Friday, November 24, 2017, as set forth in Section 14 of Appendix “S” of the Agreement. In addition, the Carrier points out that the group was then paid holiday pay on Wednesday, November 22, 2017 and Thursday, November 23, 2017 (Thanksgiving), in lieu of receiving it on Friday, November 24 (Black Friday) and observed rest days on November 24, 25, 26, and 27, 2017. In sum, the Carrier reasons that the Organization failed to prove a violation.

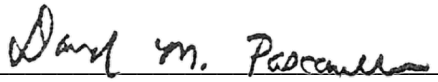
On the other hand, it is the position of the Organization that the Carrier failed to pay the Claimants for the holiday on November 24, 2017. Still further, the Organization asserts that the Carrier failed to offer the Claimants the opportunity to vote on when the Holiday will be observed. Thus, the Organization further asserts that this is a clear violation of Section 14, Appendix “S” of the Agreement. Specifically, the Organization maintains that the Carrier misled the Claimants to believe that they would be off Wednesday, November 22, 2017 with pay, without moving the Holiday from Friday, November 24, 2017. In light of this misunderstanding, no vote was taken by the Claimants. However, the Organization strongly urges that the Carrier may not unilaterally decide that November 22, 2017 would be the day the Holiday would be observed. Moreover, the Organization further maintains that the Claimants were willing to work had they not been misled by the Carrier and denied a day of pay. In sum, the Organization reasons that the Carrier simply lied and led the Claimants to believe they would be paid for the day off on November 22, 2017, without using this as their Holiday. In other words, the Organization further contends that the Claimants were willing to work had they not been misled.

OPINION OF THE BOARD:

After a careful analysis of the record, the Board finds credible the Organization’s reasoning pursuant to Section 14 of Appendix “S”. Accordingly, this claim is sustained.

AWARD:

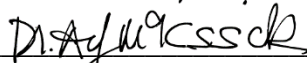
This claim is sustained. All Claimants on T-2 shall be paid eight (8) hours straight time to each Claimant. It is so ordered. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021