

PUBLIC LAW BOARD NO. 2739

AWARD NO. 9

UNITED TRANSPORTATION UNION

VS.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: T/C Switchman H. J. Archer for holiday pay on Veteran's Day, November 11, 1978.

STATEMENT OF FACTS: Switchman H. J. Archer was regularly assigned to the Bellmead Yard Switchmen's Extra Board, at Waco, Texas, during the time period involved. On November 10, 1978, claimant was available for assignment to yard service but was not called for duty. During the 30 days immediately preceding such date claimant had worked in excess of 11 assignments in yard service as a result of his position on the extra board.

When the needs of the service require the assignment of a yardman to road service, the employee standing first out on the applicable extra board will be given such assignment. Therefore, on November 11, 1978, (Veteran's Day), a recognized holiday under the Labor Agreement, claimant was called and used as an emergency brakeman for road service on Train 104. Claimant completed such assignment and returned to Bellmead Yard at 2:45PM, on November 12, 1978.

As a result of such assignment, Switchman Archer filed a claim for holiday pay for November 11, 1978. Such claim was denied by the carrier stating, "No agreement basis for claim. Used in road service on 11-11-78, not available for yard service." Such decision has been properly and timely appealed to us for resolution.

RELEVANT CONTRACT PROVISIONS:

The Paid Holiday Agreement dated April 5, 1957, as amended on November 30, 1960 and June 25, 1964, provides in Article 4 as follows:

SECTION 3(B), NOTE 3

The term "extra yard service employee" shall include an extra employee on a common extra list protecting both road and yard service....

SECTION 3(c)

Rules governing payment for service rendered on the holiday enumerated above are not changed hereby. Service performed on such days shall be paid for at the rate provided in existing schedules, and the allowance of one basic day's pay provided for in paragraph (a) of this Section 3 for qualifying employees shall be in addition thereto.

Yard service employees who work on any of the seven specified holidays shall be paid at the rate of time and one-half for all services performed on the holiday with a minimum of one and one-half times the rate for the basic day.

To qualify, an extra yard service employee must -

- (1) Perform yard service on the calendar days immediately preceding and immediately following the holiday, and be available for yard service the full calendar day on the holiday, or,
- (2) Be available for yard service on the full calendar days immediately preceding and immediately following the holiday and perform yard service on such holiday, or,
- (3) If such employee cannot qualify under Section 3(b)(1) or (b)(2), then in order to qualify he must be available for yard

service on the full calendar days immediately preceding and immediately following and the holiday, or perform yard service on any one or more of such days and be so available on the other day or days, and compensation for yard service paid him by the carrier is credited on 11 or more of the 30 calendar days immediately preceding the holiday.

NOTE: For the purpose of Section 3(b)(1), (2) and (3) an extra yard service employee will be deemed to be available if he is ready for yard service and does not lay off on his own accord, or if he is required by the carrier to perform other services in accordance with rules and practices of the carrier.

FINDINGS: A review of the cases cited by the union, in support of its claim, reveals that each had a common circumstance, to wit:

Each claimant was assigned to a common extra board, protecting both yard and road service.

The carrier attempts to distinguish the holdings in the cited awards, arguing that in this case claimant was not assigned to such a "common" extra board, protecting both road and yard service. Instead, he was only put into road service on an emergency basis. Therefore, such awards have no application.

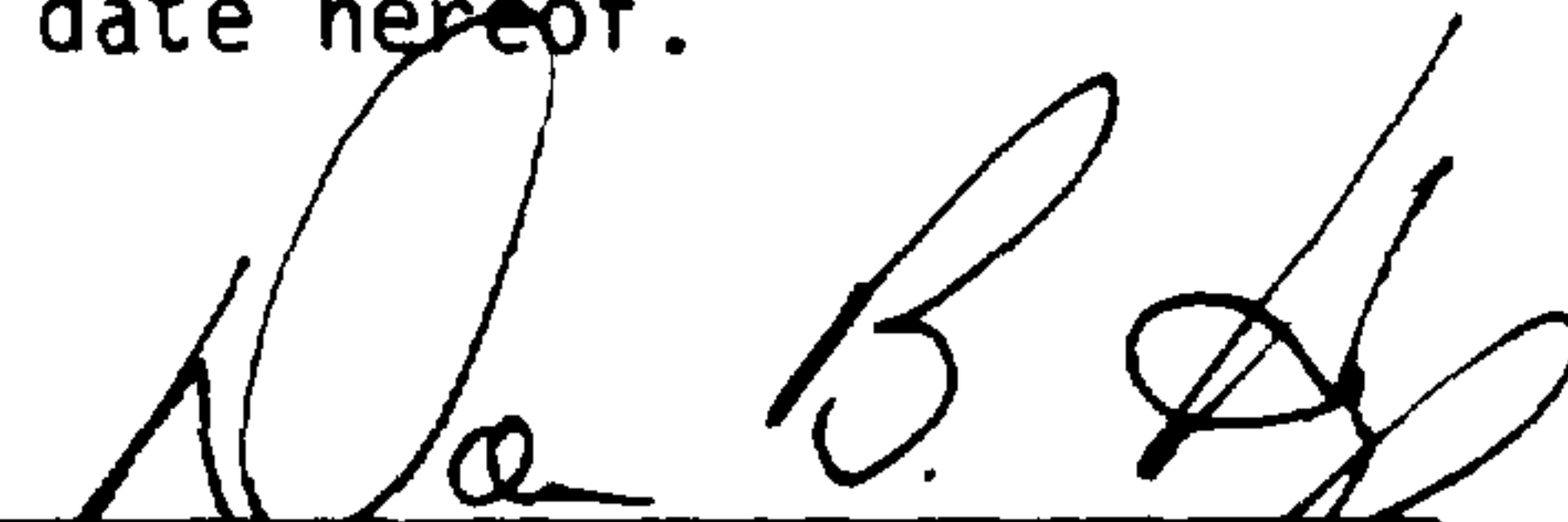
The union responds that, in emergency situations, the agreement permits the carrier certain latitude to cross-utilize yard employees to accommodate road service problems. Under such circumstances, the yard employee involved is obligated to fill such road assignment on a first in, first out basis. It reasons that the carrier's decision to exercise such freedom of assignment, coupled with the employee's obligation to perform, should not impose an economic hardship, or otherwise deny the holiday benefit, to the employee so assigned.

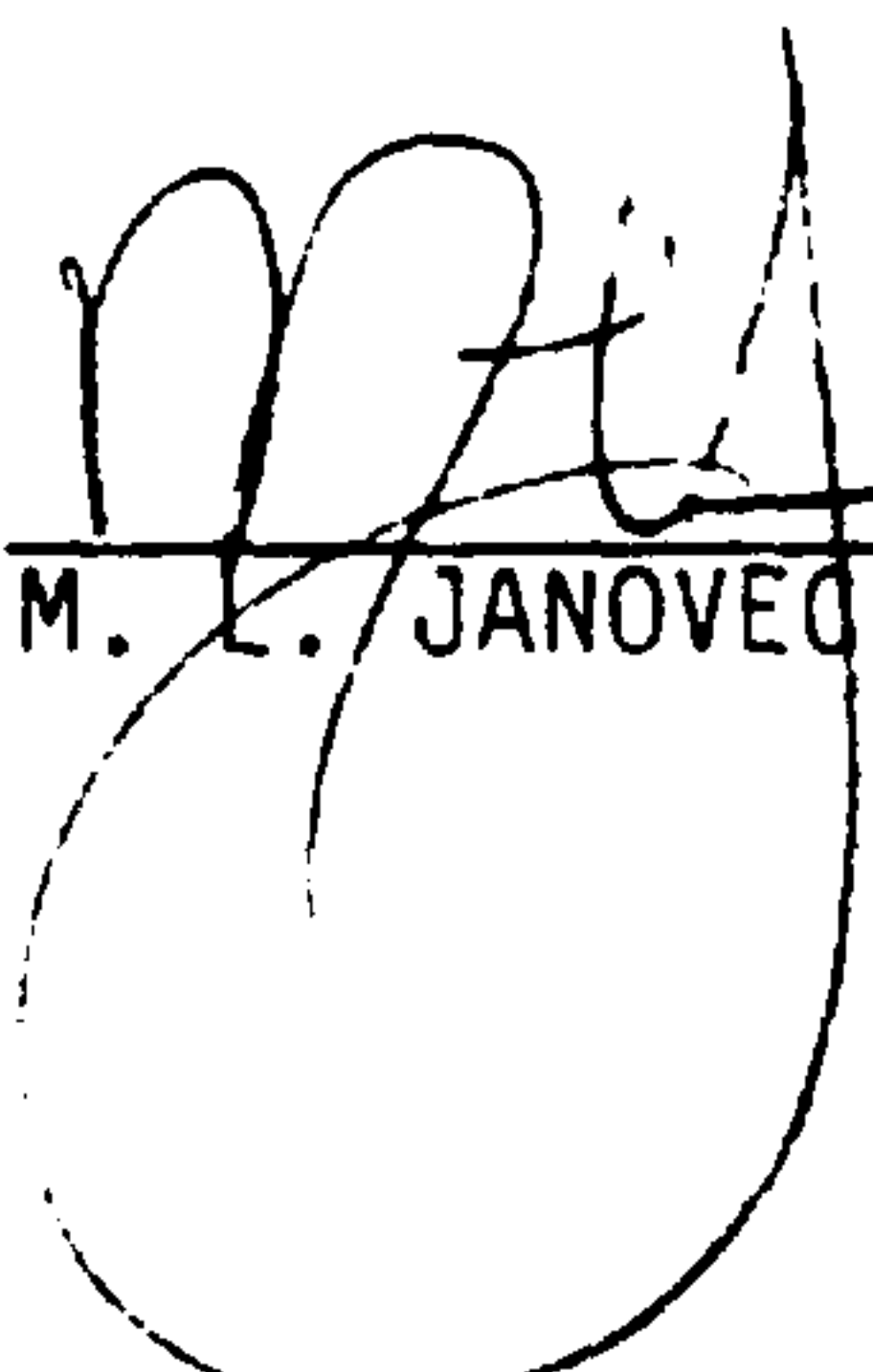
Clearly, had Claimant Archer been assigned to a "common" extra board, under the rationale outlined by Referee David H. Brown in PLB

598, Award No. 10, claimant would have qualified for the holiday pay. When the carrier exercised its authority to force the claimant to accept the road assignment, under emergency conditions, it, in effect, temporarily converted the Bellmead yardmen's board to a de facto "common board", protecting both yard and road assignments under certain limited conditions.

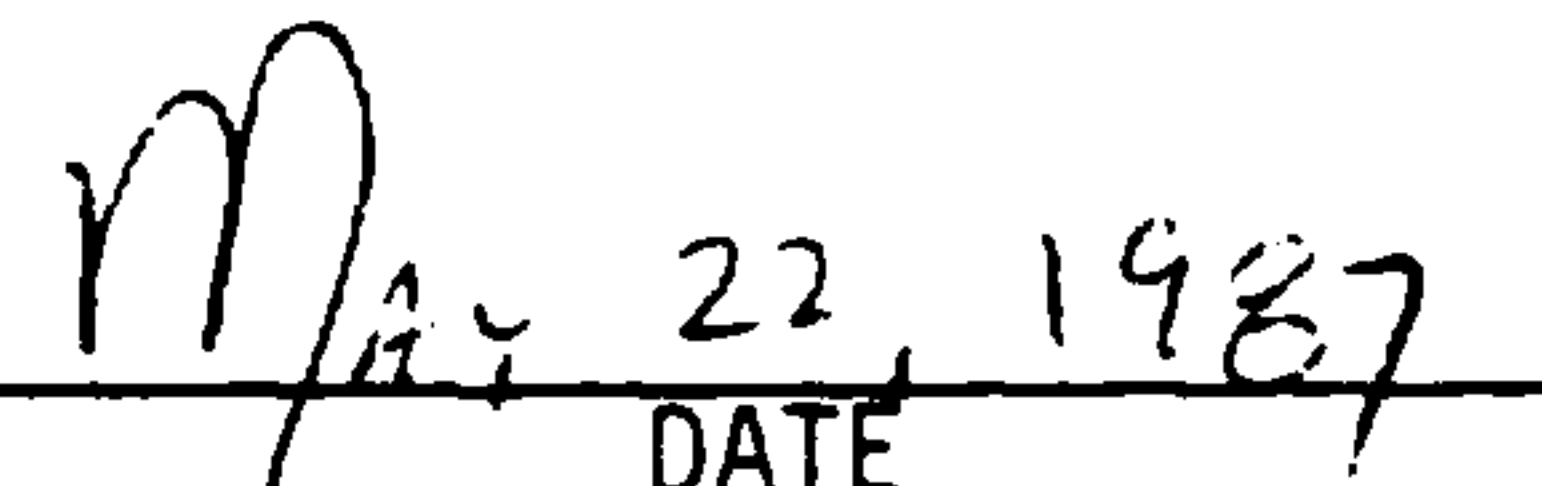
Based on such a unique circumstance, the fact that the claimant worked an assignment other than yard service on the holiday and the day following should not disqualify him for holiday pay that he would have otherwise received. Therefore, under Article 4, Section 3 of the April 5, 1957, Holiday Agreement, as amended, claimant should receive pay recognition for "all services performed on the holiday..." in accordance with the rate of pay as set out in such agreement.

AWARD: Claim sustained. Carrier is directed to implement this award within 30 days from the date hereof.


DON B. HAYS, Neutral Member


M. L. JANOVEC, Carrier Member


J. D. MCBRIDE, Organization Member *J.D.M.B*


DATE