

PUBLIC LAW BOARD NO. 3303

Case No. 23
Award No. 23

PARTIES TO DISPUTE: United Transportation Union

-and-

Burlington Northern Railroad Company

STATEMENT OF CLAIM:

Claim of Staples Yardman K. J. Gode per T/S (NN) dated February 18, 1980, claiming eight hours holiday pay February 18, 1980.

FINDINGS: This Board, upon the whole record and all the evidence finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Claimant is a Staples, Minnesota Extra List Yardman. After working off the extra list for several days, the Claimant became ill and laid off at 1:00 A.M. on February 16, 1980. He did not report back to the extra list until 11:00 A.M. on February 17, 1980. However, he did not perform any service on February 17, 1980. He did work on both February 18 and February 19, 1980. February 18 was one of the designated holidays set forth in the April 5, 1957 National Agreement. The Claimant submitted a claim for eight (8) hours holiday pay for February 18, which was denied by the Carrier since Claimant failed to protect his assignment for the full 24 hours on February 17, 1980, as required by the National Agreement.

It is the Employees' contention that Claimant is entitled to holiday pay since there is no evidence that Carrier needed his services from 12:01 A.M. until 11:00 A.M. on February 17, 1980, the period during which he had laid off due to illness. Moreover, according to the Employees, Disputes Committees established by Article X of the Holiday

Agreement have consistently held that where an employee has been relieved from duty because of a bona fide illness, that employee is nevertheless entitled to holiday pay if he otherwise meets the conditions prescribed by the National Agreement. Inasmuch as the Claimant was not available for service part of the day on February 17, 1980, because of his bona fide illness, the Employees insist that he is entitled to holiday pay since he worked on both February 18 and February 19, 1980.

Since the Claimant was assigned to extra yard service on the holiday in question, Article IV, Section 3, of the April 5, 1957, National Agreement governed his claim for holiday pay. The provisions of Section 3 are quite clear and explicit. They state, in pertinent part, that to qualify for holiday pay an extra yard service employee must "be available for yard service on the full calendar days immediately preceding and immediately following the holiday and perform yard service on such holiday...." Section 3 further provides that "an extra yard service employee will be deemed to be available if he is ready for yard service and does not lay off of his own accord...."

It is evident from the clear and explicit terms of Article IV, Section 3, of the April 5, 1957 National Agreement that an extra yard service employee must be available the full calendar day immediately preceding the holiday (emphasis added). There are no exceptions to this specific requirement in Section 3. Inasmuch as the Claimant was not available the full calendar day immediately preceding the holiday for which he is claiming holiday pay (February 18, 1980), he clearly failed to comply with the explicit qualifying requirements of the Holiday Agreement. He is therefore not entitled to holiday pay for service he performed on this holiday.

The Employees have cited several decisions rendered by Disputes Committees created by the Holiday Agreement in support of this claim. We have carefully reviewed those decisions. However, we find they inapposite to the claim now before us. It must be stressed that in each of those decisions, the employee involved worked at least part of the qualifying day unlike the Claimant who worked no part of the day immediately preceding the holiday. And even more significant is the fact that each of those employees was a regular assigned employee. Hence, Section 2 of Article IV governed their claim to holiday pay. Section 2, however, does not require regular assigned employees to be available the full calendar day immediately preceding the holiday in order to qualify for holiday pay. The referenced decisions of the Disputes Committees are therefore clearly distinguishable from the instant claim since the Claimant was an extra yard service employee who was specifically required to be available the full calendar day immediately preceding the holiday.

In our considered opinion, the Claimant was not entitled to holiday pay for February 18, 1980, since he failed to meet the conditions set forth in Article IV, Section 3, of the April 5, 1957 National Agreement. His claim must therefore be denied.

AWARD: Claim denied.

Robert M. O'Brien

Robert M. O'Brien, Neutral Member

T. J. McGuire

T. J. McGuire, Employee Member

R. E. Cassity by W.B.

R. E. Cassity, Carrier Member

Dated: AUGUST 30, 1985