

PUBLIC LAW BOARD NO. 2956

AWARD NO. 26

CARRIER FILE NO. YD-40(b) 3/21/79
UTU FILE NO. Y-1000-11-79

PARTIES UNITED TRANSPORTATION UNION

TO and

DISPUTE: BURLINGTON NORTHERN, INC.

STATEMENT OF Claim in behalf of Twin Cities Yardman
T. W. Hamilton for the basic holiday pay at
the applicable rate on January 1, 1979.

CLAIM:

FINDINGS: Claimant is a regularly assigned Yardman who has also established a seniority date as a Yardmaster. He was called to and accepted work as a Yardmaster to fill a vacation vacancy from December 18 through December 31, 1978. On January 1, 1979 he worked in his Yardman capacity as a Yard Foreman and on January 2 as a Yard Helper. He claimed holiday pay under the applicable Yardman agreement but was denied same by the Carrier.

The Carrier alleges that the Claimant failed to meet the qualifications for holiday pay under the National Agreement of November 30, 1960, of which Section 2 reads in pertinent part as follows:

(b) To qualify, a regularly assigned employee must be available for or perform service as a

regularly assigned employee on the workdays immediately preceding and following such holiday, and if his assignment works on the holiday, the employee must fulfill such assignment. . . .

Since the Claimant did not perform service as a regularly assigned Yardman on December 31, the Carrier argues that he is not entitled to the holiday pay for January 1.

The Organization points to Note 3 under the same Section which reads as follows:

An employe will be deemed to have performed service or fulfilled his assignment if he is required by the carrier to perform other service in accordance with rules and practices on the carrier.

According to the Organization, service performed as Yardmaster by the Claimant meets the requirement of Note 3 and thus qualifies the Claimant for the holiday pay. In response, the Carrier argues that the Claimant was not "required to perform other service" in that he had the choice of refusing the Yardmaster service (which would have adversely affected his seniority standing as Yardmaster). The Board finds the Carrier's argument an unreasonable interpretation.

The Claimant -- legitimately holding status of seniority for two different types of service for the Carrier -- could not have been expected to do other than he did. The basic holiday requirements concern the necessity of attendance at work before, after and, if scheduled, on the holiday. It is noted that his service on and immediately after the holiday was as a Yardman, and any entitlements as to pay as a Yardmaster ended on December 31.

The Carrier depends on two previous interpretations of this point for its defense, but the situations there were substantially different.

In Award BRT-35-E issued by a standing Disputes Committee, the Claimant worked as a Yardmaster before, during and after the holiday in question and thus would have been entitled only to such benefits as accrue to a Yardmaster during the period.

The same situation applied in Award BRT-55-W. By contrast, in the instant dispute the Claimant was on duty on the holiday as a Yardman, when both Section 2 (b) and Note 3 were applicable to him.

The Carrier also points out that another Organization, the Switchmen's Union of North America, under similar agreement with the Carrier, sought and won additional language

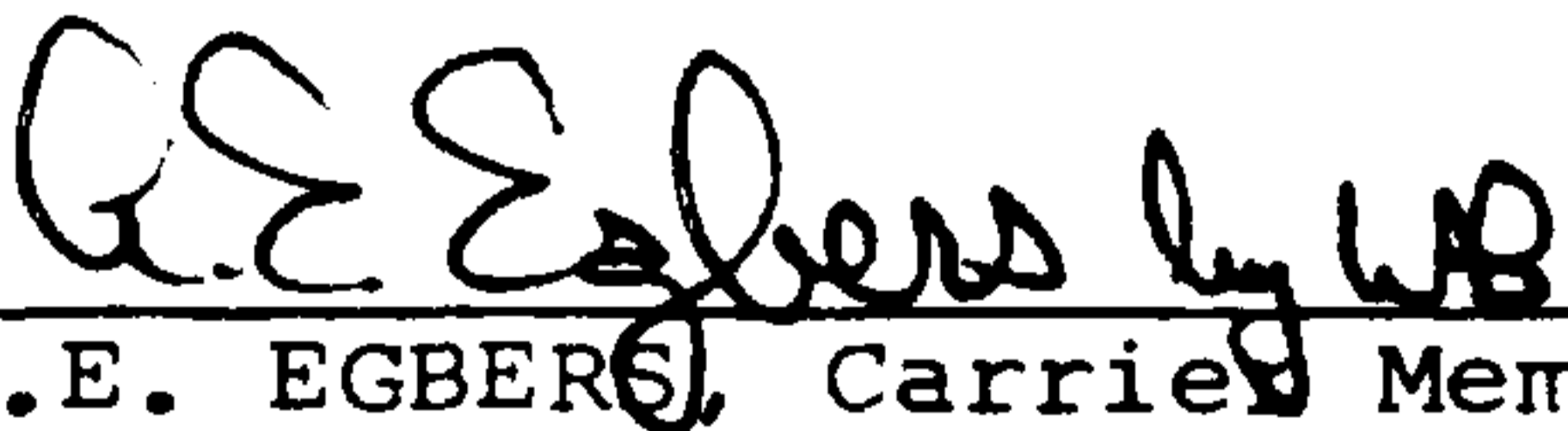
covering situations of service in more than one seniority group as to holiday pay. While such language may avoid such disputes as here under review, and may even grant further rights, it does not persuade the Board that the Organization's view in this particular circumstance is incorrect.

A W A R D

Claim sustained. The Carrier is directed to put this Award into effect within 30 days of the date of the Award.



HERBERT L. MARX, JR., Neutral Member



A.E. EGBERS, Carrier Member



C.F. CHRISTIANSEN, Employee Member

New York, New York

DATED: **JAN 7 - 1983**