

PUBLIC LAW BOARD NO. 3303

Case No. 35
Award No. 35

PARTIES TO DISPUTE: United Transportation Union

-and-

Burlington Northern Railroad Company

STATEMENT OF CLAIM:

Claim of Auburn Brakeman C.J. Egge on T/S Nos. 7 and 8 dated November 11, 1980 (Conductor Sorenson's timeslips) claiming holiday pay and time and one-half for service performed on November 11, 1980, respectively, on Transfer Crew No. 2.

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.

On November 9, 1980, the Claimant worked Transfer No. 6, tying up at 5:00 A.M. on November 10, 1980. Claimant was displaced upon tie-up and exercised his seniority to Crew No. 2. Crew No. 2 went on duty at 7:00 A.M. on November 10. Claimant could not work this assignment since he did not have sufficient rest inasmuch as he had tied up only two hours earlier. Claimant worked Transfer Crew No. 2 on November 11 and on November 12, 1980. November 11, 1980, Veteran's Day, was a designated holiday under the National Holiday Agreement. The crew of Transfer No. 2 submitted timeslips claiming holiday pay and time and one-half for service performed on November 11, 1980. Claimant's timeslip was declined, however, since he did not perform service on the day immediately preceding the holiday as required by the National Holiday Agreement.

The Employees argue that Claimant was prevented from performing service on November 10, 1980, by the Hours of Service Law. They contend that he therefore constructively performed service on the day immediately preceding the holiday and is entitled to holiday pay as a result.

It must be stressed that when Claimant was displaced by a senior brakeman on November 10, 1980, he could have exercised his seniority to a number of assignments that would have allowed him to work that day. Rather than do so, he exercised his seniority to Transfer Crew No. 2 which he could not work on November 10, 1980, because he was not sufficiently rested. Thus, by his own volition, Claimant was not available for service on the day immediately preceding the Veteran's Day holiday. He therefore did not qualify for holiday pay since he failed to meet the qualifying requirements of the National Holiday Agreement. In our considered opinion, Claimant rendered himself ineligible for holiday pay by failing to exercise his seniority to an assignment which would have allowed him to perform service on the work day immediately preceding the holiday. Accordingly, he did not qualify for holiday pay and his claim must be denied as a result.

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 WB

R.E. Cassity, Carrier Member

Dated: AUGUST 30, 1985