

PUBLIC LAW BOARD NO. 1890

Award No. 31
Docket No. 31

Case E-23147

PARTIES TO DISPUTE:

BALTIMORE & OHIO RAILROAD COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Time and half holiday pay Engineer W. J. O'Brien,
February 21, 1972.

FINDINGS:

As of February 21, 1972, Claimant was standing on the Extra Engineer's Board at Cumberland, Maryland that protects both road and yard service. On February 21, 1972 (Washington's Birthday), Claimant was called to protect a vacancy as an engineer on the Romney Branch Local. Claimant operated Cumberland to Morefield, West Virginia (short of Petersburg) and return 107.4 miles.

For services rendered on that day, Claimant was compensated based on a payment of 8 hours at the straight-time rate and 5 hours, 40 minutes at the overtime rate, plus 21 minutes' initial terminal delay time. Claimant, thereafter, filed a claim for time and one-half account working the holiday.

The Carrier contends that Claimant, under the Paid Holiday Rule, did not qualify for compensation for such service calculated at time and one-half.

The Organization contends that Claimant was assigned to the Combination Extra List, had worked his 11 qualifying work days as required by Article 3(c) of the March 10, 1969 National Agreement, and was entitled to holiday pay under the provisions of the June 25, 1964 Agreement (as amended by Article III of the March 10, 1969 National Agreement).

Article III(c) provides:

The provisions of Section 3 of Article I of the Agreement of June 25, 1964, will apply to extra employees on a common extra list protecting both road and yard service, to whom compensation for yard or hostling service has been credited on eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday; and Section 3(a) will be amended accordingly.

In its submission, the Carrier states:

In this case, the Claimant was allowed compensation for the road trip calculated at pro rata engineer's rate (8 hours) plus five (5) hours, forty (40) minutes' overtime plus twenty-one (21) minutes' initial terminal delay. The claim is that road compensation now be computed at the time and one-half rate. The point is that, even though the Claimant was off the Cumberland (East End) extra list that protected both road and yard service, his status as of the holiday was unaffected by the modified Article III(c). Section 3(d) of the Paid Holiday Rule covered only "extra yard service employees" and here, the Claimant was used on the holiday from the board in road service. As of the holiday, he was not in the category of an "extra yard service employee". Article III(c) made no change in the qualifying requirement for punitive right for work performed on a holiday.

Carrier relies on Award No. 26 of Public Law Board No. 1305, on this property, and asserts that it is dispositive of the issue in the instant dispute. In denying the claim, the Board in Award No. 26 of Public Law Board No. 1305 stated, in relevant part:

2. Section 3(d) covers "extra yard service employees" only. Since Claimant engineer was used from the extra engineers list for road service on the holiday he was not in the category of an "extra yard service employee" on the date of the claim, and therefore presents no rule support under Section 3(d).

It does not appear that the Board in Award No. 26 considered the application and effect of Article III(c) of the 1969 Agreement. Nor does it appear that it considered the NOTE 3 of Section 3(e) reading:

The term "extra yard service" shall include extra employees on a common extra list protecting both road and yard service, to whom compensation for yard or hostling service has been credited on eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday.

Additionally, this Board finds that the Board in Award No. 26 also did not consider the NOTE at the end of Section 3(b) of the 1969 Agreement reading:

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 of his own accord, or if he is required by the Carrier to perform other service in accordance with rules and practices on the Carrier. (Underscoring added)

More to the point is Award No. 10

of Public Law Board No. 598 (UTU & Western Maryland Railway) involving a claim for time and one-half for work on Christmas Day by a claimant who was regularly assigned to the Engineers Extra List at Hagerstown, a list providing employees for both yard and road service. In that case the claimant was available for yard service on the day before and after the holiday; on the holiday he was called and worked in road service. In sustaining the claim, the Board in Award No. 10 of Public Law Board No. 598 stated, in pertinent part:

Carrier's defense is an equation of this situation with one where an extra employee not otherwise covered performs qualifying service during the holiday period. The situations are not analagous. Claimant does not rely on Section 2 of the Agreement. His claim is based on Section 3 providing holiday benefits (including time and one-half) to extra yard service engineers who meet certain requirements. Such requirements are as follows:

1. The employee must be an extra yard service employee. NOTE 3 of sub-paragraph (e) specifically provides that an "extra yard service employee" shall include extra men on a common list for both yard and road service.

2. If his service is regulated by such list, then he must have been credited with pay for yard or hostling service on at least 11 of the 30 calendar days immediately preceding the holiday. Claimant so qualifies.

3. Section 3 of the sub-paragraph (b) makes the requirement that in order to qualify an employee must be available for yard service on the full calendar days immediately preceding and immediately following and the holiday. Claimant was available for yard service on December 24 and 26. Under the NOTE following the quoted language it is provided that is deemed "to be available if he...is required by the carrier to perform other service in accordance with rules and practices on the carrier." "Other service" obviously means service other than yard service—such as the road service to which Carrier assigned him in accordance with rules. Carrier makes the point in its submission, "Section 3(d) confines payment at the rate of time and one-half for service performed on a holiday in yard service." Carrier's interpretation of Section 3(d) is not supported by the language in such section. The language reads: "Any of the extra yard service employees...who works on any of the holidays...shall be paid at the rate of time and one-half for all services..." (Underlining ours). There is no mention of working in yard service.

After review of this record, this Board is satisfied that Award No. 26 of Public Law Board No. 1305, on this property, is palpably erroneous and has no precedential effect. Based on the foregoing this claim shall be sustained.

AWARD:

Claim sustained. Carrier is directed to make payment within 30 days from the date of this Award.

Nicholas Fumar
Neutral Member

J. J. Mander
Carrier Member
Dissenting

J. M. Mander
Organization Member

Date: 9-14-82