

Award No. 2

Case No. 2

PUBLIC LAW BOARD NO. 1479

Parties to Dispute
UNITED TRANSPORTATION UNION
and
BURLINGTON NORTHERN, INC.

STATEMENT OF CLAIM:

Claim from Bend Yard Conductor A.J. West for one day's pay at punitive rate, plus one hour pro rata footboard yardmaster pay and one-half hour air pay allowance, account assignment annulled on July 4, 1972 and claimant not notified.

DISCUSSION

Claimant A. J. West was a relief foreman in Bend Yard during July, 1972 and was scheduled to relieve the foreman on the 11:30 p.m. yard engine on July 4, 1972. Although the assignment had been annulled because of the observance of the holiday, the Claimant was not advised of the annulment until he arrived for work at 11:30 p.m. on July 4, 1972.

The Claimant submitted a timeslip for 8 hours' holiday pay which was allowed by the Carrier. He also submitted a claim for 8 hours at the overtime rate,

1 hour as footboard yardmaster's pay, and 30 minutes as air pay, all of which was not allowed by the Carrier. However, the Carrier paid the Claimant 8 hour's pay at the pro rata foreman's rate, which payment is characterized by the Carrier as a "gratuitous consideration for any convenience he may have been caused." Thus, the Claimant received a total of 16 hours' pay at the pro rata rate for the day. The question remains as to whether he is entitled to an additional 4 hours' pay, 1 hour as footboard yardmaster's pay and 30 minutes as air pay.

The Organization contends as to all three elements of the claim, that an employe who reports to work on a holiday with an expectation to work his assignment, is entitled to the amounts he would have received had he worked. As for the element regarding payment for working on the holiday, the Organization notes that the Claimant was required to be rested in order that he could work instead of enjoying the holiday with his family.

The Carrier alleges that, absent a rule or agreement so providing, overtime compensation is not required to be paid for time not worked. As for the claim for 8 hours at the overtime rate, the Carrier calls attention to Section 1(b) of Article I of the June 25, 1964 National Agreement, which provides as follows:

"(b) Substitute the following provision in lieu of existing rules governing payment for service specified paid holidays:

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 service performed minimum of one and one-half times the rate for the basic day." (Emphasis supplied)

Regarding the claim for one hour as footboard yardmaster pay, the Carrier notes that Appendix K of the Open Yard Schedule Agreement provides as follows:

"...the yard foreman at Bend will be allowed one hour at pro rata rate, in addition to other payments at the yard foreman's rate, for performing duties as footboard yardmaster." (Emphasis supplied)

As for the claim for 30 minutes as air pay, the Carrier notes that the June 5, 1969 Memorandum of Agreement provides as follows:

"All Yardmen will receive an allowance of one-half hour at the appropriate pro rata rate (Foreman or Helper) in addition to all other compensation for the tour of duty worked." (Emphasis supplied)

Thus, as to all three elements of the claim, the Carrier points out that there is a stated contractual requirement that services be performed, or that a tour of duty be worked as a condition for payment. Since the Claimant did not work, but only reported for work, on July 4, 1972, the claim must be denied, asserts the Carrier.

FINDINGS

Based upon the whole record and all of the evidence, this Board finds that:

The Carrier and the employe or employes involved in this dispute are respectively employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.


The Carrier is correct in its assertion that there is an explicit contractual requirement that duties or work must be performed as a condition for entitlement to compensation as regards all three elements of the instant claim. However, as the Board sees it, the real question here involved is the degree of penalty that the Carrier should suffer because of its failure to notify the Claimant in a timely manner that he need not report to work on the holiday, thus causing the Claimant the inconvenience of reporting to work on the holiday but not allowing him to work. The board is convinced that fairness dictates that he receive more than mere holiday pay for an unworked holiday, for indeed, that is no penalty at all. On the other hand, the Board is also convinced that fairness dictates that payment to the Claimant as though he worked on the holiday when he actually did not, is too extreme a penalty. In short, the Board is of the view that the additional 8 hours' pay at the pro rata foreman's rate paid the Claimant by the Carrier was a reasonable penalty for failing to notify him that he need not report. Accordingly, the Award in this case is as follows:

AWARD

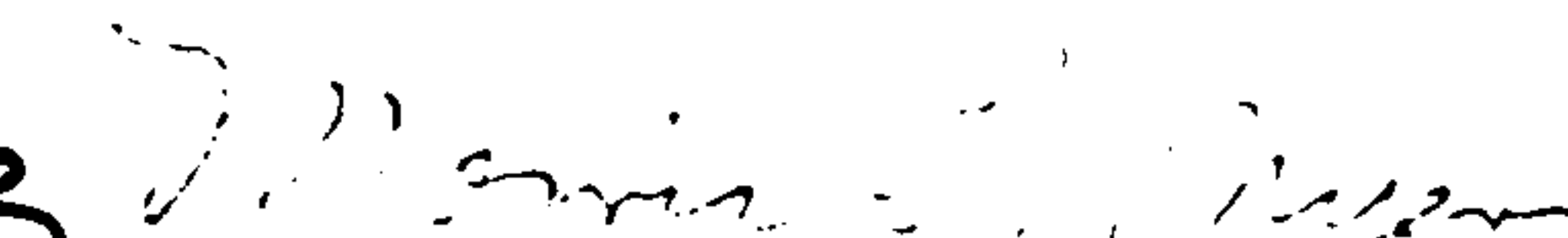
The claim is denied.

January 25, 1979

PUBLIC LAW BOARD NO. 1473


A. E. EGBERS,
Carrier Member


D. C. DEERING,
Employee Member


MORRIS L. MYERS,
Neutral Member