

PUBLIC LAW BOARD NO. 1312

Award No. 528

Docket No. 616

36339/377

Case No. 30013

Parties United Transportation Union

to and

Dispute Baltimore and Ohio Railroad Company

Statement of Claim Claim of Conductor C. L. Duncan, ID 1-046570, for Holiday Pay, February 17, 1975.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 19, 1974, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on February 17, 1975, the birthday holiday, held a regular assignment as a Conductor Pilot on the former Buffalo Division (BR&P). He worked that day his assigned turn, pilot of Penn-Central trains operating over the BR&P tracks from Lincoln Park, New York (Rochester) to McKinley, New York and return to Lincoln Park, a distance of some 18.2 miles. The claim is predicated on Article 1, Section 2 (a) of the June 25, 1964 Agreement, reading in pertinent

part:

"(a)...each regularly assigned road service employees in local freight service, including road switchers, roustabout runs, mine runs, or other miscellaneous service employees, who are confined to runs of 100 miles or less and who are therefore paid on a daily basis without mileage component and who meet the qualifications set forth in paragraph (c) hereof, shall receive one basic days' pay at the rate for the class and craft of service in which last engaged for each of the following enumerated holidays when such holidays fall on the assigned work day of the work week of the individual employee...."

"(c) To qualify for holiday pay, a regularly assigned employee referred to in paragraph (a) hereof must be available for or perform service as a regular assigned employee in the classes of service referred to on the work days immediately preceding and following such holiday, and if his assignment works on the holiday, the employee must fill such assignment...."

Pilot Service, on the BR&P has been recognized as a distinct and separate class of service. Rule 5 in the applicable Agreement effective July 1, 1955 reads:

"Pilot Service

Pilots in road service shall receive road conductors pay."

A similar Rule, Article 2 (b) in the Yard Service Rules reads the same. Public Law Board No. 969, on this property, in its Award 1758 (Seidenberg), although involving another organization, involved the same rule, handled a claim therein concerning a regular through freight assignment operating less than 70 miles in each direction and compensated for 100 miles each way, that Board, in part pertinent here, held:

"The issue here in dispute has been mired in controversy for almost a decade. However, it must be noted that the more recent Awards have consistently held that employees engaged in through freight service of runs of less than 100 miles one way, having no mileage component in their pay base, are not engaged in local freight service and therefore not entitled to the holiday pay provided for by Article 1, Section 2(a). This view is not only the current one, but is also the view representing the majority and the weight of decided authority.

After carefully analyzing the relevant contract language and reviewing all the Awards cited by the parties, the Board adopts the current and prevailing weight of the cited authority as the interpretation which is most consistent and compatible with the intent and purpose of the language of Article 1, Section 2(a), and therefore finds that Claimant is not entitled to the holiday pay sought for this claim.

The Board is constrained to state that if it had been the original intention of the contracting parties to grant holiday pay to road service employees engaged in through freight service with no mileage component in the pay structure, that by this time they would have negotiated or renegotiated a contractual provision to that effect, in view of the fact that this issue has been involved in controversy for almost ten years. The failure of the parties to do this is persuasive evidence that it was not the intent of the contracting parties to grant holiday pay to through freight road service employees who operate runs of less than 100 miles each way.

When this Board relies on the existing contract language in issue, it must hold that this language does not support the instant claim."

Pilot Service, as was previously pointed out, is paid through freight rate. It is not a class of service specified in Article 1 Section 2 (a). We find no basis in this record

to conclude that such service would fall in "or other miscellaneous service employees".

Consequently, the Board finds no reason in this record to not follow the above cited Award on this property. It will deny the instant claim.

Award Claim denied.

A F White

A. F. White, Employee Member

D Kelly

D. T. Kelly, Carrier Member

Arthur T Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Baltimore, Maryland, May 7, 1980.