

PUBLIC LAW BOARD NO. 2212

AWARD NO. 16
CASE NO. 16

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

vs.

PORTLAND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim in favor of Switch Foreman, G.L. Martin for eight hours holiday pay for February 19, 1979.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act as amended; that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter; and that the parties were given due notice of this hearing.

FACTS

Claimant was a regularly assigned foreman on Crew No. 89. He worked on February 14, 1979, the last work day of his work week with Thursday and Friday, February 15 and 16 his rest days. On Saturday, February 17, he started his vacation consisting of 14 days ending on Friday, March 2. February 19, during the vacation period, was a holiday for which the claimant would ordinarily be entitled to pay for one day. On March 1, claimant was notified that he had been displaced. March 1 and 2 were the rest days completing the second week of vacation on his regular assignment on Crew No. 89. Claimant

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would have normally returned to work on March 3 after the completion of his vacation. Exercising his seniority, claimant displaced a junior employee on Crew No. 71. On that assignment, Saturday and Sunday, March 3 and 4 were the rest days. The claimant performed his first service following the vacation on Monday, March 5.

THE ORGANIZATION'S POSITION

The Organization relies upon the following Rules to wit:

"Rule 14:(a) When an assigned Switchman is displaced, he may displace any junior assigned Switchman,---."

Rule 17(c) that deals with the exercise of seniority, everything being equal. Also, Article I, Section 1(a), listing the paid holidays. Subdivision (b), thereof, states:

"To qualify, a regularly assigned employee must perform service as a regularly assigned employee on the work days immediately preceding and following such holiday,---."

NOTE 3: A regularly assigned yard service employee who qualified for holiday pay under paragraph (b) above shall not be deprived thereof by reason of changing from one regular yard assignment to another regular yard assignment on the work day immediately preceding or following the holiday or on the holiday."

It is argued that by denying the claim, the Carrier has restricted the interpretation of the seniority and displacement rules and has eliminated the protective provisions of the NOTE 3. It is contended that the claimant had the right to displace any junior switchman on any regular assignment, as he did in this case.

Reference is made to a case involving Yard Foreman Brannon. In that case, the claimant voluntarily exercised his seniority on the day after the holiday to an assignment that had started two hours before the time that the claimant exercised his seniority to that

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assignment. The Organization argued that the claimant would not have worked on the 2 rest days following the holiday so that by changing his assignment he actually worked one day earlier than would have been his regularly scheduled work day on his initial assignment. The claim was allowed in that 1962 case. In the case of claimant Farrell in 1981, claimant ended his vacation on March 1, day's off were March 2 and 3; claimant was bumped off job on March 3, and bumped onto another job on March 3 with regular day's off on March 4 and 5 so that his first scheduled work day following the holiday was March 6. The holiday occurred during the vacation period; the facts in the record do not indicate that any other assignments were available on which the claimant could have exercised his seniority to be available for service on an earlier date. Reference is also made to a sustaining award of the First Division No. 22883 in which holiday pay was allowed by reason of a rule that provided that an employee would not be disqualified from holiday pay by reason of an annulled assignment on the work day immediately preceding or following the holiday. In that case the assignment had been annulled from December 24 through December 29, while the claimant was on vacation and was re-established on December 30, 1969. The claimant worked on the first available day after the end of his vacation period.

THE CARRIER'S POSITION

It is contended that the qualification for holiday pay stated in (b) quoted above, of ARTICLE I, requires the claimant to be available for service on the first work day following the holiday. Arguing that the claimant having ended his vacation on March 2, could have worked on March 3 by displacing 2 junior employees on

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other assignments, with rest days on Monday and Tuesday, March 5 and 6, or with rest days on Sunday and Monday, March 4 and 5, instead of choosing an assignment with rest days immediately following the end of his vacation so that he did not work again until March 5.

The Carrier makes reference to the denial decision of the National Holiday Disputes Committee (SBA No. 765). In that case the claimant also had a choice of 4 assignments which would have worked immediately following the holiday but chose to exercise his seniority to a job with rest days following the holiday so that he was not available for service on the first day that he could have been scheduled to work immediately following the holiday. Reference is also made to a denial award of SBA No. 64 Award No. 780. That case also involved a choice of an assignment that started at a later time when there were available assignments on which the claimant could have displaced junior employees in order to work on the day following the holiday. In that case, it was stated that the issue was whether or not the claimant made himself available for service on the day following the holiday and found that: "Not having bid his seniority so as to work on the required days, claimant does not qualify under the rule."

FINDINGS

The Organization has correctly pointed out that the Carrier's position is predicated upon decisions emanating from other Carriers with rules that may be different from the relevant rules in this case. Nevertheless, it is evident that the requirement in the cases cited by the Carrier requires that the employee exercise his right to another assignment in such manner as to be available for

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service on the first possible scheduled work day immediately following the holiday. The prior settlements on this property referred to by the Organization, one in 1962 and another in 1981 while similar are not squarely on point as explained above.

The decision in this case must rest squarely upon the agreement on this property. The Displacement Rule No. 14(a) does give to a Switchman the right to displace any junior assigned Switchman. This is a general statement not necessarily related to the Holiday provision. The Holiday provision of ARTICLE 1(b) states that in order to qualify, the regularly assigned employee must perform service as a regularly assigned employee on the work day (in this case) immediately following the holiday. It is the accepted practice to pay for holidays that occur during a vacation period provided that the claimant is otherwise qualified. In this case, on the facts stated above, the claimant could have chosen to displace junior employees on assignments that would have made it possible for him to be available for service on a scheduled work day immediately following the end of his vacation. The Carrier by its position, in effect, concedes that had the claimant done so he would be entitled to the holiday pay. The Carrier has not argued that the claimant deliberately extended his vacation or days away from work by choosing the assignment that he did. Nevertheless, the first day worked by the claimant was not the first day that he could have been available for service had he chosen to displace a junior employee on one of the other assignments. Further, NOTE 3 to (b) of Section 1 of ARTICLE 1 protects an employee who has changed from one regular yard assignment to another regular assignment

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provided that the employee has qualified for holiday pay under paragraph (b). That provision would not protect the claimant if he did not qualify under (b).

The Board finds that by choosing the assignment that he did, the claimant did not make himself available for service on the first scheduled work day following the end of his vacation period. This finding is inescapable if credit is given to the language of (b) of the agreement that states that the regularly assigned employee "must" perform service as a regularly assigned employee on the work day immediately following the holiday.

A W A R D

Claim Denied

Dated: *May 2,* 1983
Portland, Oregon

Irving T. Bergman

IRVING T. BERGMAN, Neutral Member

F. Levin dissent

Organization Member

ET Strong

Carrier Member