

NATIONAL MEDIATION BOARD

Public Law Board 2005

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Former Penn Central Transportation Company

and

United Transportation Union (C&T)

\* Dispute Concerning  
\* Holiday Pay Under  
\* National Agreement

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Members of the Board:

Chairman and Neutral - Robert J. Ables

Carrier - J. B. Kuhnle, Jr.

Organization - R. M. Crago

Representing Management:

J. B. Kuhnle, Jr., Manager,  
Labor Relations (Conrail)  
J. A. Rice, Assistant Manager,  
Labor Relations

Representing the Organization:

Robert M. Crago, VP, UTU  
William M. Kerwin, General Chair-  
man, UTU, Conrail (PC-NYC),  
Northern District  
Richard D. Grant, Local Chairman,  
UTU 1776

Place and Date of Hearing:

Detroit, Michigan; March 28, 1978

Date of Proposed Decision:

June 9, 1978.

PUBLIC LAW BOARD NO. 2005

Former Penn Central Transportation Company

and

United Transportation Union (C&T)

Dispute Concerning Holiday Pay Under National Agreement

Statement of the Claim:

T-16379 - Claim of the Following Road Condrs. and Brkmn.,  
Detroit, for Holiday Pay:

<u>CONDUCTOR</u>	<u>BRAKEMAN</u>	<u>DATE</u>	<u>CLAIM NO.</u>
J. Dallas		5/28/75	4275
	J. Pulido	5/26/75	4276
J. Dallas		5/26/75	4277
	G. Hogg	6/24/75	4278
F. L. Newman		7/04/75	4279
	G. Sullivan	7/11/75	4280
	R. W. Hackman	7/04/75	4281
	W. A. Gulak	7/04/75	4282
	J. Robinson	7/04/75	4283
	D. Heintz	7/04/75	4284
R. Hewgley		7/04/75	4287
	M. Small	7/04/75	4288
	W. Belleau	7/04/75	4297
	R. Layman	7/04/75	4298
	J. Pulido	7/04/75	4299
	J. Pulido	7/04/75	4300
M. Rourke		7/04/75	4301

<u>Continued CONDUCTOR</u>	<u>BRAKEMAN</u>	<u>DATE</u>	<u>CLAIM NO.</u>
	C. Jones	7/04/75	4302
J. Dallas		7/04/75	4303
	E. Porter	7/04/75	4304
	E. Carner	7/04/75	4305
	J. Sheridan	7/04/75	4306

#### Opinion of the Board

According to the Organization, on the dates specified, following successful bid, supported by seniority, claimants were assigned to a specific pool and worked in through freight pool service between Detroit and Toledo, Ohio, a distance of 58 miles and/or between Detroit and Jackson, Michigan, a distance of 75 miles, and between Detroit and Sterling yard, a distance of about 20 miles. The claim is for holiday pay for work performed on a designated holiday by claimants while in such pool service.

According to the Carrier, the claim is for holiday pay for work performed on specified holidays, except for two claimants whose claim is based on a day off because of birthday. Some of the claimants worked off a road extra list by filling vacancies in passenger; pool through freight; or local or road switch run service. Some of these employees did not work on the day preceding or the day following the holiday for which they claim holiday pay.

#### Agreement on Holiday Pay

The claim is based on the Paid Holiday National Agreement of June 25, 1964 which provides in Article 1, Section 2 of the National Agreement, as amended, as follows:

"PAID HOLIDAYS

The following provisions shall apply to regularly assigned employees represented by the United Transportation Union in Yard Service, and regularly assigned Road Service employees paid on a daily basis:

(A) Each regularly assigned Yard Service employee, and each regularly assigned Road Service employee in Local Freight Service, including Road Switches, 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 a mileage component, and who meet the qualifications set forth in Paragraph (c) hereof, shall receive one basic day's pay at the rate for the class and craft of service in which last engaged for each of the following enumerated holidays:

New Year's Day

Washington's Birthday

Decoration Day

Fourth of July

Labor Day

Veteran's Day

Thanksgiving Day

Christmas Day and the Employee's Birthday.

Only one basic day's pay shall be paid for the holiday, irrespective of the number of shifts or trips worked.

Note: When any of the above listed holidays fall on Sunday, the day observed by the State of Nation shall be considered the holiday."

Employee Must Be Regularly Assigned And In Local Freight Service To Be Eligible For Holiday Pay

It is superfluous to say there have been many arguments by different carriers and their employees about the proper interpretation and application of this - and other - provisions of the National Paid Holiday Agreement and that

numerous awards by experienced and by inexperienced referees have split as to how the agreement should be interpreted and applied. The dozens of awards cited and reviewed in this dispute confirm this state of ambivalence in the application of the rule.

The views of this Board may be no more persuasive or controlling than those which preceded it; but, a claim has been made, a dispute has been identified and there is an obligation to resolve it in a responsible way.

The trigger conditions to the operation of the rule in issue are that the claimant must be (1) "regularly assigned" and the employee must be in (2) "local freight service" to be eligible for holiday pay.

The phrase "local freight service" is explained by example, including roustabout, mine and miscellaneous runs under 100 miles. Any work falling reasonably within the kind and type of service so explained should be accepted as coming within the category of local freight service. But, there is no latitude in the rule with respect to the category itself. To be eligible for stipulated holiday pay, the employee must be in a local freight service.

In a national agreement where the parties are experienced and knowledgeable and are prepared to negotiate and agree on precisely what they think they can persuade the other side to agree to in a contract, there is no room for the interpreter of the agreement to extend or extrapolate the agreement as to the class or the kind of person covered by the agreement. It follows, therefore, any work, such as through freight service which cannot be made to fit within the category of local freight service (with all the examples which give the category substance and depth), cannot be accepted as qualifying for holiday pay under this rule. Through freight service, by its terms, is not local freight service.

To make its case, therefore, that the claimants satis-

fied the condition in the agreement that they be in local freight service, the Organization had the burden to identify the employees in the kind of work they performed, which formed the basis for the claim, in order to be eligible to be paid under that claim. The employees, however, did not develop this information. Aside from stating that the claimants were in through freight service (which, standing alone, would disqualify them from payment under the rule), the Organization relied on the fact that the distance involved between the points on which claimants performed work was less than 100 miles. By extension of the phrase in the rule describing local freight service, i.e., "miscellaneous service" the Organization effectively argues that claimants have satisfied the requirement that the work be performed in local freight service.

The Carrier, however, added much more information about the claimants and when, and where, they worked.

For those claimants who asked for holiday pay for being off on their birthday, there is clearly no basis to require the Carrier to pay the claim. For those claimants who worked in passenger service on the dates on which the claim is made for holiday pay, there is no basis for requiring the Carrier to pay the claim. As to those claimants who worked out of a regularly assigned pool or off an extra board, the question of their right to holiday pay depends on the meaning to be given to the first trigger phrase which conditions the obligation of the Carrier to pay the claim, i.e., whether or not each employee, (assuming he was in local freight service) was "regularly assigned".

Work Out Of A Pool Or Extra Board Can Be "Regularly Assigned"  
Work, Depending On The Facts

Much of the precedent cited by the Organization supports its contention that employees assigned to a pool are regularly assigned for the purpose of holiday pay. These de-

cisions do not run counter to any interpretation of that question by this Board. Employees who bid for and are assigned to a pool and who provide service on a regular basis can be accepted as employees with regular assignments, the same as someone who "holds" the job in the conventional sense. The first in, first out condition (which may or may not apply to pool service employees) absence of a starting time, or any other particular working condition or requirement of a regularly assigned job need not eliminate the pool service employee from eligibility for a paid holiday. The test should be the regularity and duration concerning which he performs any covered work as a pool service employee.

It may be that the parties and the neutral referees who have addressed this difficult question of what constitutes regularly scheduled work have in their uncertainty how to construe the condition, tried to take too big a cut in trying to answer the question. The many recent decisions on the point seem to go all or nothing as to whether a broadly described assignment falls within or outside a regular assignment. Like the hitter who always swings for the home run, he's very likely to strike out. However, it may be that only a base hit is required to win the game or to keep a rally going. Somewhat the same analogy may be applied here. If the parties would develop the facts more concretely, more responsible decisions would be possible whether a given claim should or should not be honored.

It does not seem to square with the purpose of the paid holiday rule to decide that all pool service or extra board work is or is not regularly assigned.

If the parties would keep in mind that the purpose of the rule under the national agreement was to give an employee pay for a holiday he was not getting before, then, depending on the facts, the parties should in most cases be able to come to an agreement that a particular employee was or was not filling a regular assignment. The longer

such employee filled a regular assignment, the easier it should be to conclude he is "regularly assigned" for purposes of holiday pay. If it happened that an employee in pool service or even off an extra board worked continuously for a sustained period of time, say several months or even in some cases several weeks,\* in which he fills a particular assignment or, if it were on a floating basis, covering the same work for different employees, the parties would be in a position - assuming elementary fair-mindedness - to agree that that employee should get the benefit that was intended when they agreed on paid holidays under the national agreement. And, in those cases, when they did not agree, a neutral referee would be in a better position to judge, against the standards agreed to by the parties on paid holidays, whether the particular claimant qualified for the benefit.

In the gradations of work to be eligible for holiday pay, it should be accepted that the employee on the extra board is in a less strong position than the employee in pool service because, typically, such employee is strictly on call and is not likely to work for a sustained period in a particular job. In these cases, it should not be difficult for the parties (and a referee, if required) to conclude that holiday pay is not authorized because the purpose of the rule was to give relief or a benefit to somebody who worked regularly on a job and who was not previously paid for that work on a holiday. It follows on this reasoning there is little basis to sustain a claim in those cases in which the Organization claims that holiday pay is authorized simply because an extra or pool service employee has filled the job of the employee regularly assigned, for as little as one day, and therefore automatically gets the benefits and privileges of the regular incumbent of the job. If the em-

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\* Using, perhaps, the period between each holiday as a base against which to measure the amount of time such pool or extra employee would have to work to be eligible for holiday pay.

ployees would accept that the purpose of the rule did not contemplate extending the benefit to so extreme an ad hoc basis, the parties would be in a better position to accept that the employee who does work on some extended basis, in a regular assignment, or type of assignment, should get the benefit.

Employees Have Not Adequately Supported The Claim On The Facts

In the absence of the clear intent of the parties in negotiating the phrase "regularly assigned" and in the absence of a definition of the term, there seems to be no alternative to deciding each case on the merits, but the way to decide the case on the merits is to develop the facts so that fair minded parties can make a responsible judgment whether or not the claim should be paid under the circumstances.

Because the employees in this case have not satisfied the condition that the claimants were in local freight service and that the particular claimants, in the particular work they performed, in the time they performed such work, reasonably satisfied the test requiring that they be regularly assigned, the claims must be denied.

Findings:

The Board, upon the whole record and all the evidence, finds that:

The Carrier and Employees involved in this dispute are respectively Carrier and Employee within the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute and the

parties involved herein and the parties were given due notice of hearing.

The work was not in local freight service.

The employees were not regularly assigned.

The Carrier did not violate the Agreement.

Award:

Claims denied.

*Robert J. Ables* August 3, 1978  
Robert J. Ables  
Chairman and Neutral

*R. M. Crago*  
R. M. Crago  
Organization Member

*J. B. Kuhnie, Jr.*  
J. B. Kuhnie, Jr.  
Carrier Member

Date (of Proposed Award): June 9, 1978.