

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 2280

AWARD NO. 23

(ITEM NO. 23)

Referee Fred Blackwell

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION - E

vs.

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM:

Engineer L. B. St. Martin - Time and one-half account working in yard service on holiday.

FINDINGS:

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, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION:

This is a third party dispute in which the BLE, after being duly notified of its interest in this case, made response to such notice in a July 10, 1980 letter to this Board by Dennis C. Simmerman, BLE Chairman, Soo Line Railroad, Such letter states that the BLE agrees with the interpretation by the U.T.U. (E) of the herein schedule rules and recommends that the claim be sustained. Accordingly, this Board has jurisdiction to dispose of the said dispute on a basis which is final and binding on the interests of the original parties and the BLE.

The issue in this case is whether or not the qualifications for holiday pay is a condition precedent to an Engineer's entitlement to the time and one-half rate of pay for working on one of the holidays enumerated in the parties' National Holiday Agreement.

The Organization says that an Engineer who worked on a holiday is entitled to be paid at the time and one-half rate for such work under the Holiday Agreement, without regard to his entitlement to holiday pay. The Carrier says that qualification for holiday pay and entitlement to time and one-half for work on a holiday are interrelated, and that an Engineer is either entitled to both or to neither.

Both parties have submitted prior authorities in support of their respective positions. The Organization has submitted two awards which arose from Firemen's claims on this property: Award No. 6, P.L. Board No. 303 (5-28-69) and Award No. 7, P.L. Board No. 707 (1-26-72). The Carrier also cites several awards arising on this property: Award No. 3, P.L. Board No. 303, (5-28-69); Award No. 115, Special Board of Adjustments No. 678 (12-1-70); Award No. 40, P.L. Board No. 1300 (6-30-75); and Award No. 2, P.L. Board No. 1584 (2-6-76). Awards cited by the Carrier from other properties are Decision No. 4902 Special Adjustment Board No. 18 (5-24-74) and Decision No. 896 Special Adjustment Board No. 180 (6-26-72).

The parties concur that the Agreement provisions pertinent to this dispute are found in Article 1, Section 2, Paragraphs (a), (b), and (c) of the National Agreement of June 25, 1964.

Based on careful study of the foregoing, and the entire record, the Board concludes that the awards cited by the Organization stand for the correct construction of the Agreement provisions which govern this case.

The rationale for the awards which support the Organization's position, as taken from Award No. 7, P.L. Board No. 707, is as follows:

"Article VIII, Section 2(a) of the September 14, 1968, holiday agreement provides that certain described employees who meet certain requirements shall receive holiday pay at basic rates. Section 2(b) also provides time and one-half pay for any of the employees described in Section 2(a), including 'regularly assigned road service employees in local freight service,' who work on the holiday."

The rationale for the awards which support the Carrier's position, as found in Decision No. 409, Special Adjustment Board No. 18, is as follows:

"Section 2(b) applies only to employees described in Section 2(a) and Section (a) in turn refers to Section 2(c) which requires that the employee must be available for service on the work days immediately preceding and following the holiday. This claimant was not available on the day following the holiday."

The Organization's authorities have obviously construed the pertinent provisions as establishing holiday pay entitlement as something wholly separate and apart from entitlement to time and one-half pay for working on a holiday. The Carrier's authorities, on the other hand, conclude that time and one-half pay for work on a holiday requires an employee to have qualified for holiday pay, the reason being that the cross-reference in 2(b) to

2(a) brings in Section 2(c) on the same footing as Sections 2 (a) and 2(b). This latter construction, in short, uses the cross-reference technique as a means of treating the paragraphs in Sections 2(a) and 2(c) as a single paragraph for the purpose of the confronting problem.

The last-mentioned construction and the involvement of Section 2(c) goes one step too far in this Board's view, because the Section 2(b) phrase reading "Employees described in paragraph (a)", can logically be read as referring only to the types or categories of employees enumerated in Section 2(a). The phrase cannot soundly be read as including the fact conditions concerning qualifications for holiday pay, because those conditions are found in Section 2(c), rather than in Section 2(a). Moreover, while the opening clause in Section 2(c) reading "to qualify for holiday pay" is clearly cast as a predicate for the conditions which lead to receipt of the pay, nowhere in the succeeding text is there any verbiage to indicate that pay for work on a holiday is in anyway intended to be covered by the text of Section 2(c). The text in Section 2(b) is the only source of reference to pay for work performed on a holiday. That text, and the reference to the type of employees enumerated in the text of Section 2(a), do not render the text of Section 2(c) applicable to the confronting facts so as to make this claim dependent upon whether the claimant had qualified for holiday pay. The critical fact is that the claimant performed work on the holiday. That fact alone entitles

him to time and one-half pay for such work under the parties' Holiday Agreement, on that basis the claim will be sustained.

AWARD: Claim sustained.

This award shall be complied with within 30 days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 2280

October 28, 1980

Fred Blackwell
Fred Blackwell, Neutral Member

Del C. Deering
Del C. Deering, Labor Member

A. W. Durtsche
A. W. Durtsche, Carrier Member