

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

With Referee Robert M. O'Brien

Award 23308

Docket 43156

PARTIES (Brotherhood of Locomotive Engineers
TO (
DISPUTE (
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Case No. 78-115: Claim of Extra Engineer J. L. Hastings, one basic day holiday pay March 24, 1978, and also nine hours and ten minutes at the overtime rate instead of eight hours pro rata rate and one hour and ten minutes at the overtime rate allowed on March 24, 1978."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

The Claimant was regularly assigned to the engineers' extra board, a common extra board protecting both road and yard service at Albany, Georgia. On March 21, 1978, a designated holiday, Claimant was on duty for nine (9) hours and ten (10) minutes, and as a result, he claimed one basic day for the holiday and nine (9) hours and ten (10) minutes at the overtime rate in addition to his basic pay. These claims were submitted in accordance with Article 45 of the BLE-SCL Schedule Agreement. However, the Claimant had been suspended by the Carrier for thirty (30) days from February 6, 1978 to March 7, 1978. Thus, the Carrier denied the claims on the basis that the Claimant did not have compensation credited for eleven (11) of the thirty (30) days immediately preceding the holiday of March 31, 1978.

It is the Organization's position that the Claimant would have had the required eleven (11) days in the preceding thirty (30) days in creditable yard or hostling service except for the suspension imposed by the Carrier which prevented the Claimant from qualifying for holiday pay under Article 45 of the applicable Agreement. Since the Claimant's suspension was imposed by the Carrier and was therefore beyond the Claimant's control, the Organization contends that the days of suspension should be creditable toward the eleven (11) days required under Article 45 of the Agreement. The Organization asserts that its position is supported by Award No. 114 of Public Law Board No. 308 and First Division Award No. 22889.

It is the Carrier's position that Claimant did not qualify for the basic day's holiday pay, or for the claim for time and one-half under Article 45, Section 3(b), Note 2 of the controlling Agreement. To qualify under Article 45, an extra engineer protecting the common road-yard board must work or be compensated for eleven (11) days during the thirty (30) day period immediately preceding the holiday. Since the Claimant was suspended for his violation of the Carrier's Operating Rules during fourteen (14) of the thirty (30) days immediately preceding the holiday, he did not qualify for the holiday pay, the Carrier contends. Thus, it is the Carrier's position that Claimant was not denied the qualifying days by the Carrier, but the days in which he may have qualified were taken from Claimant as a result of his own actions. Further, the Carrier asserts that the instant claim is distinguishable from Award No. 114 of Public Law Board No. 308 and First Division Award No. 22889 which are relied upon by the Organization.

Article 45 of the applicable Agreement reads, in pertinent part, as follows:

"To qualify, Employees on a Common Extra List protecting both road and yard service, must have compensation credited for yard or hostler service on not less than eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday."

A careful reading of the record before us in the instant claim reveals that the Claimant did not have compensation credited for eleven (11) days of the thirty (30) immediately preceding the holiday on March 21, 1978, as required by Article 45 quoted hereinabove. The Claimant was serving a thirty (30) day suspension until March 7, 1978, for his violation of the Carrier's Operating Rules. The period of Claimant's suspension should not be counted as time in which he had "compensation credited" for purposes of holiday pay.

Further, the Awards relied upon by the Organization are clearly distinguishable from the instant claim. In Award No. 114 of Public Law Board No. 308, the pertinent contractual language upon which that Award was sustained required that an employee "must be available for or perform service..." in order to qualify for holiday pay. In the instant claim, however, Article 45 of the Agreement states that an employee must have "compensation credited" in order to qualify for holiday pay. Clearly, since the Claimant was serving a thirty (30) day suspension, he did not have "compensation credited" for eleven (11) of the thirty (30) days immediately preceding the holiday. In Award No. 114, however, the Board found that the suspension of the employee in that case did not make him "unavailable" for the performance of service; therefore, the employee qualified for holiday pay under the specific contractual language in that instance. However, the controlling contractual language herein makes the instant claim clearly distinguishable from that Award.

In First Division Award No. 22889, the Board found that an employee was entitled to holiday pay since he had worked eleven (11) days of the thirty (30) days preceding his vacation which included or immediately preceded the holidays in question. In the instant claim, it is the Organization's position that the Claimant had made the required eleven (11) within thirty (30) days immediately preceding his suspension; therefore, in accordance with Award No. 22889, he qualified for the holiday pay requested herein. It is the opinion of this Board that the circumstances involved in the instant claim, wherein the Claimant was suspended, cannot be accurately analogized to that Award, wherein the employee was on vacation for the qualifying period. Award No. 22889 is clearly distinguishable on its facts from the instant claim.

We find that the period of Claimant's suspension should not be counted as creditable time for purposes of holiday pay under Article 45 of the controlling Agreement. The Carrier has cited First Division Awards No. 21856 and No. 21857 which, although not decided on this property, support the Findings of this Board. Inasmuch as Claimant did not qualify under Article 45 of the Agreement, the instant claim shall be denied.

AWARD Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

DATED AT CHICAGO, ILLINOIS
THIS 2nd DAY OF March 1982

ATTEST:

Executive Secretary
National Railroad Adjustment
Board

By:


Assistant Executive Secretary