

PUBLIC LAW BOARD NO. 3599

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United Transportation Union .
v. . Award No. 10
Union Pacific Railroad Co. . Case No. 15
(South Central District) .
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Statement Of Claim:

Claim of Yermo Footboard Yardmaster G.W. Crouch, Helpers T.M. Kennedy and D.P. Sanford for 150 miles, September 6, 1982, account not notified of job being blanked on holiday.

Findings:

The Carrier accepts it did not give required notice, under Rule 23 of the Yardmen's Agreement, on Friday, September 3, 1982, that the claimants' jobs for Monday, September 6, 1982, Labor Day, had been blanked (annulled).

The claimants were paid 100 miles for that holiday.

The dispute is whether the claimants should have been paid an additional 150 miles, as the Organization argues, or not, as the Carrier argues.

Each party cites supporting awards.

The Organization relies on the decision by Public Law Board No. 2336, Award No. 2, this property, VanWart (1980). That Board found that the Carrier had violated Rule 23 and sustained the claim "for one pro-rated day". The day in issue in that case, January 2, 1978, was not a holiday. Also, the Organization relies on a decision by Public Law Board No. 2716, Award No. 14, Brotherhood of Locomotive Engineers and Houston Belt & Terminal Railway Company, Dolnick (1981). The Board sustained the claim in full, involving a holiday, reasoning that if the claimants had worked the holiday, "they would have received eight (8) hours straight time, holiday pay, plus eight (8) hours at the time and one half rate."

The Carrier relies on the decision of Public Law Board No. 1863, Award No. 15, this property, VanWart (1977). The claim was sustained but the Board reasoned "that absent a showing of injury to the Claimants by the breach, there is no basis for the monetary aspect of this claim", leaving the claimants having been paid for the holiday only at the straight time rate of pay.

Also, the Carrier relies on the decision of Public Law Board No. 189, Award No. 6, United Transportation Union T Division and Union Pacific Railroad Company, Cluster (undated). On the facts, the Board denied the claim involving Rule 31(b) concerning personal notice of discontinuation of an assignment, but not involving a holiday. The Board found that the Carrier had "fulfilled its duty obligation under the rule to make a reasonable effort to notify those employees" of the discontinuance.

Further, the Carrier cites Public Law Board No. 879, Award No. 23, Denver & Rio Grande Western Railroad Company and United Transportation Union (S), Moore (1971). The Board denied the claim.


No holiday was involved. The question in issue concerned notice requirements before completing shift work, or last day work.

Of the decisions relied on by the Carrier, the Moore and Cluster awards, involving different rules and facts, have no bearing on the instant dispute. The VanWart decision sustaining the claim, but limiting pay to straight time pay for the holiday because there was no showing of injury justifying additional pay, did not include reasons for finding there was no injury. Presumably, it is distinctly disadvantageous to an employee if he is not able to plan to use a three day holiday because he is scheduled to work.

On a finding here that the claimants were so disadvantaged by the failure of the Carrier to give due notice under Rule 23 and on the persuasive rationale of the Dolnick award, this Board finds that these claims should be paid as though the claimants had worked on Monday, Labor Day, September 3, 1982.

Award:

The claims are sustained.




 Robert J. Ables
 Chairman and Neutral Member



 J. E. Cook
 Carrier Member

Presenting



 J. L. Easley
 Employee Member

Adopted: *December 19, 1982*