

FEB 6 - 1961

L61-62
17-8

The Director of Unemployment and Sickness Insurance

The General Counsel

Your Memorandum of December 22, 1960

Holiday Pay - The Delaware and Hudson Railroad Corporation

You have asked whether remuneration is attributable to July 4, 1960, in the case of extra clerks for The Delaware and Hudson Railroad Corporation who are compensated for services rendered "under a monthly rate of pay". The extra clerks in question did not work on July 4, and were not carried on the payroll for that day. However, the Railroad contends that they received holiday pay for July 4 by virtue of Section 2(a), Article II, of an Agreement dated August 21, 1954, between certain carriers and fifteen railway labor organizations representing nonoperating employees.

In 1953 the organizations served on the carriers certain proposals for changes in rules and working conditions. One of these called for seven paid holidays each year for all employees.^{1/} Subsequent negotiations between the parties were unsuccessful, and an Emergency Board was eventually established. In its Report the Emergency Board recommended that regularly assigned hourly rated employees be paid for each of the 7 holidays when it falls on a workday. It also expressed a desire to give comparable treatment to monthly rated employees. The Board indicated that, for the purpose of overtime payments, the hourly rates of certain monthly rated employees were computed on the basis of 169-1/3 hours per month, and that this figure had been arrived at as follows: 10 1/2 rest days and 7 holidays were deducted from the 365 days of the year, leaving 254 days; this number multiplied by 8 (hours in the normal workday) and divided by 12 (months of the year) equals 169-1/3. The Emergency Board concluded that these monthly rated employees were not being paid for the seven holidays, and it recommended that their monthly pay be computed on a basis which would include pay for those holidays.^{2/}

^{1/} The seven holidays are: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

^{2/} Report to the President of Emergency Board No. 106, dated May 15, 1954, pages 38-40, 52.

The Director of Unemployment
and Sickness Insurance

Following the issuance of the Report of the Emergency Board, the parties entered into the Agreement of August 21, 1954. It provides that regularly assigned hourly and daily rated employees who meet certain requirements shall receive eight hours' pay for each of the 7 holidays when such holiday falls on a workday. No provision for holiday pay was made for hourly and daily rated employees not regularly assigned.^{3/} With respect to monthly rated employees the Agreement provides as follows:

"Monthly rates, the hourly rates of which are predicated upon 169 1/3 hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The hourly factor will thereafter be 17 1/3 and overtime rates will be computed accordingly.

Weekly rates that do not include holiday compensation shall receive a corresponding adjustment." (Section 2(a), Article II)

According to information furnished a Board representative by the Manager of Personnel of the Railroad, the daily pay of a monthly rated extra clerk is computed by dividing the number of working days in the month (excluding rest days and holidays) into the monthly rate allocated for the job. He informed our representative that the extra clerks in question "do not appear on the payroll for the holiday and received no extra pay except by virtue of the adjustment gained by the 1954 agreement in increasing the total monthly rate to include the 56 hours (7 holidays) spread over 12 months." In an inter-office memorandum dated October 25, 1960, the Manager of Personnel contended that if the extra clerks perform service on a monthly rated job on one or more days in a calendar year remuneration is payable to and accrues to them on each of the holidays.

It is obvious that in the case of a monthly rated extra clerk who is called for work only infrequently, any additional amounts received by virtue of Section 2(a), Article II, of the 1954 Agreement would not compensate him for the 7 holidays, or perhaps for even one of them.^{4/}

^{3/} The Agreement was amended on August 19, 1960, to include hourly and daily rated employees who are not regularly assigned but who meet certain requirements. No change was made in the provisions relating to monthly rated employees.

^{4/} It appears from the claim files sent us with your memorandum that some of the extra clerks had comparatively little work in the 6 months prior to July 4, 1960. Thus, Stephen A. Matala, S.S.A. No. 203-03-5122, claimed unemployment benefits throughout this period, reporting only 35 days' employment.

The Director of Unemployment
and Sickness Insurance

Moreover, the facts that the extra clerks are not carried on the payroll for the holidays, and that in computing their daily pay holidays are treated the same as rest days, indicate that they are not really regarded as paid for those days. It is therefore my opinion that remuneration is not attributable to July 4, 1960, in the case of the extra clerks in question.

The regional office folders and your bureau file are returned herewith.

151 D135

Myles F. Gibbons
General Counsel

Attachments

BDQ:ps