Award No. 2345
Docket No. 2208
2-B&M-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: 1) That under the applicable agreements the Carrier improperly denied the following named employes of the Carmen's Craft at Concord Shops, Concord, New Hampshire

Alfred Provencher
Walter Jameson
Peter Coriveau
Norman Gilbert
William Brown
William Kirby
Honorie Bonefout
Melvin Tillotson
L. J. Sullivan
B. W. McCarthy
Joseph Pynn
James Kirby
Joseph Levine
Sylvio Roy
Norman Mitchell
John Berry
William Fifield
William Menzies
Richard Morgan
Exemepha Lentendre
Philip Lafond
Frank LaRose
John McGuire
Amirigo Toronto
F. J. Dixon
Carlo Altiere
Paul Carabedian
William Drover
A. L. Milbury
A. L. Lewis
Jean Lavoie
Lewis Smith
R. N. LaDuke
John Jelley
Harold Douillette
Clement Couchine
W. W. Landry
Louis Brown
Norman Blais
Eldon Corney
Kenneth Mayhew
Robert Wright
Paul Nolin
Arthur Ouellette
C. L. Strand
E. L. Nadeau
Donald Ash
Narcisse Guilbeault
Reginald Strover
Carl Johnson
Edward Harris
William Cote
Arthur Allquist
H. R. Fuller
Perley Woodward
Joseph Labresque
R. L. Andrews
Leo Ariell
Russell Corney
Alfred Seymour
Burton Robinson
P. Provencher
Jesse Labonty
Edmond Allard
Frank McConnel
Fred Lafond
J. R. Michaude
Thos. Dimitriadis
Morris Sabian
Royal Blais
Arthur Bussiere
Leo Poulin
E. D. McGown, Jr.
Felix Frenchette
August Hinsty
Vincent Ventura
George Lennon
Romeo Morin
Henry Merchant

eight (8) hours pay at the pro-rata rate for July 5, 1954; a legal holiday.

2) That, accordingly, the Carrier be ordered to compensate the above-named employes for eight (8) hours holiday pay for July 5, 1954.

EMPLOYES' STATEMENT OF FACTS: The above-named employes, hereinafter referred to as the claimants, were regularly assigned employes of the Boston and Maine Railroad, hereinafter referred to as the carrier, at Concord Shops, Concord, New Hampshire, in the carmen's craft holding seniority in their respective class.

The claimants were assigned to a work week of Monday through Friday, with rest days of Saturday and Sunday.

There has been in effect for several years a gentlemen's agreement between Vice President-Operations F. W. Rourke, Boston & Maine Railroad and System Federation No. 18 on the stabilized force at the Billerica, Mass., and Concord, New Hampshire, Shops, which has improved conditions and has been highly satisfactory to both parties.

Because of this agreement the general chairmen of System Federation No. 18 were called into Mr. Rourkes' Office and told that because of financial conditions then existing the shops would have to remain closed beyond the group vacation period until August 5, 1954.

Then in accordance with the provisions of Articles 4 and 13 of the National Vacation Agreement of December 17, 1941, as amended, the representatives of the Employes and the authorized representative of the carrier entered into an agreement which had for its purpose the assignment of employes to a group vacation, the assignment of the remaining forces to work during the vacation period and the assignment of the forces to work during the reduced force period from July 20 to August 5, 1954.

This was accomplished by an exchange of letters, copies of which are submitted herewith and identified as employes' Exhibits A and B.

With particular reference to Exhibit B, which is a copy of the understanding prepared by the carrier and submitted to the general chairman in support of its position in the handling of this dispute on the property, the employes direct the Honorable Board's attention to the following sentence thereof:

> "No claims will be progressed account of the foregoing handling."

The employes submit a copy of a statement dated January 4, 1956 by Frank L. Davis, president of System Federation No. 18, wherein it will be noted that the above-quoted sentence did not appear in the originally signed letter of understanding of June 15, 1954.

The provisions of the reduction in force Rule 21 of the agreement of April 1, 1937, were waived, and the corrected notice posted June 24, 1954, provided for the reduced force.

The agreed-to-vacation dates of employes is submitted herewith and identified as Exhibit D. The claimants did not work on the recognized legal holiday, July 5, 1954. The claimants began their vacation period on July 6, 1954, and ended on July 19, 1954, inclusive.

The claimants were compensated by the carrier for work performed on Friday, July 2, 1954, the work day immediately preceding the 4th of July holiday celebrated on July 5, 1954.

The claimants began their vacation on July 6, 1954, and, as such, compensation paid by the carrier is credited to the work day immediately following the holiday.

"Were the claimants 'regularly assigned' employes on July 5, 1954, and were the claimants compensated **the work day** following the Holiday?"

The foregoing proves conclusively the answer to be:

"No, the claimants **were not** 'regularly assigned' employes on July 5, 1954, and they **were not** compensated the **work** day following the Holiday, because they were furloughed (See Carrier's Exhibit 'A') at close of work on July 2, 1954."

For the record—the carrier has had no disputes with the petitioner, nor any other non-operating organization party to the August 21, 1954 agreement, relating to whether a man is or is not entitled to pay for holidays not worked, because extensive research was conducted by personal consultation with other Eastern Railroads, and as a result thereof, a positive policy was fixed. A circular letter was independently authored, printed and distributed, which was obviously recognized as a reasonable and fair interpretation of the words "regularly assigned", by all non-operating organizations on this property.

The petitioner recognizes that a man is not "regularly assigned" when furloughed. The petitioner cannot argue that the claimants were not furloughed, merely because they were extended the courtesy of taking vacations while furloughed. The record proves to the contrary.

Any decision contrary to the carrier's position in this dispute would be incongruous to Article II, Section 1 of the August 21, 1954 agreement.

The carrier submits that because the claimants were furloughed at close of work on July 2, 1954, and did not own an assigned position on the holiday, July 5, 1954, they are not, then, "regularly assigned" as required under Article II, Section 1 of the August 21, 1954 agreement.

The claim is without merit, unfounded, unsupported, and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Claimants are members of the Carmen's Organization regularly assigned at carrier's Concord Shops, Concord, New Hampshire. All were assigned to work Monday through Friday with Saturday and Sunday as rest days. These claimants had a vacation assignment of July 6 to July 19, 1954. Because of financial conditions, employes were informed that the shops would remain closed beyond the assigned vacation period until August 5, 1954. A complete understanding was had with reference to the layoff, the recalling of the men and their assignment to positions. Claimants were not paid holiday pay for July 5, 1954, and they contend they are entitled to it under the circumstances herein recited.

The controlling rules are set forth in the agreement of August 21, 1954. This agreement in part provides:

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of

the work-week of the individual employe: * * * Fourth of July * * *." Article II, Section 1.

A second qualifying provision is contained in Article II, Section 3, which is not here involved. The sole question is whether these claimants were regularly assigned on the holiday for which claim was made or, as contended by carrier, they were furloughed employes on such day.

It appears from the record that carrier closed its Concord Shops commencing at the close of work on July 2, 1954, in accordance with arrangements made with the Organization. The arrangement is set forth in a letter dated June 14, 1954, as follows:

> "This confirms various meetings and telephone conversations relative to the partial shut-down of Billerica and Concord Shops, commencing at the close of work on July 2, 1954. * * *.
>
> Abolishment of Positions: Notice of closing would list only those jobs to be retained; all others would be abolished.
>
> Recalling back to Work: A blanket notice would be sufficient, and to be posted simultaneous with abolishment notice. All men report back to work on August 5, 1954.
>
> Reposting abolished positions: All abolished positions would be reposted after the men return to work.
>
> Vacation and passes: An exception to policy would be made relative to vacations and pass privileges, wherein vacations with pay would be granted even though the men will be furloughed, and passes would not have to be turned in during shut-down."

On June 24, 1954, carrier gave the following notice to all employes:

> "Corrected abolishment Notice. Abolishment Notice dated June 16, 1954, is hereby corrected to read as follows: Effective at close of work on July 2, 1954, all positions at Concord Car Shop will be abolished, except those retained for running repairs, etc., and to protect the records."

The jobs to be retained were then listed which did not include those of the claimants.

The understanding and notice clearly shows that the shops were to be closed down on July 2, 1954. The notice of abolishment was to list jobs to be worked and all others were to be abolished. Vacations with pay were to be granted by special arrangement even though the men were furloughed. The abolishment notice clearly stated that all positions were abolished except those listed for retention. We can come to no conclusion other than that claimants positions were abolished at the close of work on July 2, 1954, and by agreement they received their vacation pay even though they were furloughed. Not being regularly assigned within the purview of Article II, Section 1, of the Agreement of August 21, 1954, claimants were not entitled to holiday pay under the retroactive provisions of that agreement. Award No. 2254.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.