

Award No. 2486
Docket No. 2317
2-NYC&StL-SM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements the Carrier improperly denied Sheet Metal Worker Donald Giles holiday pay for the Fourth of July, observed on Monday, July 5, 1954.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate Sheet Metal Worker Donald Giles for the Fourth of July holiday for eight (8) hours at the pro rata rate.

Employees' Statement of Facts: Donald Giles, hereinafter referred to as the claimant, is employed by the New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the carrier, as a sheet metal worker at Conneaut, Ohio.

The claimant was regularly assigned to a Monday through Friday work week with Saturday and Sunday as rest days.

The claimant qualified for a ten (10) consecutive work days with pay vacation and was assigned by the carrier, together with a majority of the employees of Conneaut Shop, to take his vacation beginning on July 6, 1954.

The claimant was notified by the carrier that effective at the close of his shift on Friday, July 2, 1954, he was furloughed.

The claimant was not notified by the carrier of any change in his assigned vacation dates. The carrier granted the claimant the vacation pay that he had qualified for and he was allowed ten days' vacation during the first half of July, see submitted copy of letter, identified as Exhibit A, addressed to General Chairman Anderson by Chief Mechanical Officer O. R. Pendy.

The claimant had compensation paid by the carrier credited to the work days immediately preceding and following the Fourth of July holiday. The

of July in no way changed his status as a furloughed employee. Such payments are made to employees on furlough or on leave of absence if their employment relation and right to recall are maintained.

General Chairman L. V. Anderson, in his letter of February 10, 1955 (carrier's Exhibit G) states, "It seems, in my opinion that Mr. Giles was not furloughed July 2nd as stated in the notice but was furloughed July 13th and was entitled to sign for unemployment following his furlough."

It is a fact that an employee is not eligible for unemployment compensation under the Railroad Unemployment Insurance Act for periods during which he receives compensation from his employer regardless of whether such compensation is for sick leave, vacation payments, or other basis. But this does not change the status of the employee from a furloughed employee to a regularly assigned employee. The furloughing and assignment of employees are provided for and are governed by the current working agreement. The Railroad Unemployment Insurance Act does not purport to change the working agreement nor prevent the carrier from furloughing an employee.

The opinion of General Chairman Anderson that Claimant Giles was furloughed on July 13, 1954, instead of on July 2, 1954 is refuted by Rule 24 of the current agreement and the bulletin and notice of June 25, 1954, quoted verbatim in the carrier's statement of facts. The opinion expressed by the general chairman is contrary to the basic and undeniable facts.

On Monday, July 5, 1954, a holiday under the working agreement, claimant was a furloughed employee. As such he held no regular assignment because his job had been abolished as of the close of work on July 2, 1954. Therefore, claimant was not a regularly assigned hourly rated employee on July 5, 1954, and did not qualify for the holiday pay of eight hours at pro rata rate under Article II, Section 1, of the August 21, 1954 agreement.

The above being true, the claim is without merit and must 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 employee or employees involved in this dispute are respectively carrier and employee 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 this dispute were given due notice of hearing thereon.

On June 25, 1954 the claimant and others were advised by a bulletin that their positions would be discontinued at the close of the workday, Friday, July 2, 1954. The claimant was notified on June 25, 1954 of the impending reduction of forces. He was furloughed at the close of the July 2 workday. This advance notice complied with the requirements of the agreement. The claimant was scheduled to begin his annual ten (10) day vacation on July 6, 1954. Since his position was abolished and he was on furlough, he received payment in lieu of vacation.

We find from the record that the claimant was furloughed on July 2, 1954 in accordance with the procedures in the agreement, and that on that date he ceased to be a regularly assigned hourly rated employee. Since the claimant was not a regularly assigned employee on the holiday, he failed to qualify under Article II, Section 1 of the August 21, 1954 Agreement for eight (8) hours' pro rata pay for the holiday which occurred on July 5, 1954.

AWARD

Claimed denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2486

The majority in the instant findings refer to Award 2169. We dissented from that Award and are constrained for the same reasons to dissent from the instant findings and award.

The majority should have found here, as was found in Award 2173 that "claimant was a regularly assigned employe within the intent and meaning of Section 1 of Article II of the agreement of August 21, 1954 and therefore eligible to receive the benefits thereof."

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink