

Award No. 3131

Docket No. 2874

2-CofG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, Carman Helper Elmore J. Smith was denied holiday pay for Labor Day, September 3, 1956.

2. That accordingly, the Carrier be ordered to compensate Carman Helper Smith in the amount of eight (8) hours at the applicable pro rata rate of his position.

EMPLOYEES' STATEMENT OF FACTS: Elmore J. Smith, hereinafter referred to as the claimant, was employed as a carman helper with a seniority date of March 22, 1943, at Macon, Georgia. Claimant was a furloughed employe, being used under the provisions of Article IV of the November 5, 1954 Agreement, to relieve Carman Helper O. B. Cornelius, who was off sick, and, whose regular assignment worked Saturday and Sunday relieving a 7-day position, and working in the shop Monday, Tuesday and Wednesday to complete his 40-hour week, observing Thursday and Friday as rest days. Claimant had been working in Cornelius' place for about a month prior to August 31, 1956. On September 1, 1956 claimant received letter from Master Mechanic McKay, copy submitted herewith and identified as Exhibit A, instructing him to report to work "as soon as possible". Claimant was already at work and had been at work for several weeks and continued on the same job for several weeks thereafter, and, during this time worked on September 2 and 4, 1956.

Labor Day, Monday, September 3, 1956, a recognized holiday fell in the regular workweek of Helper Cornelius whom claimant was relieving.

SUMMARY

Carrier has shown beyond a shadow of a doubt that the payment demanded by the employes is unfounded. Since there is no agreement rule, past practice nor historical custom to sustain the claim, it should be denied in its entirety. The carrier urges the Honorable Board to so hold.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant Smith who had been on furlough, was recalled August 4, 1956, to work in place of Carman Helper Cornelius who was off sick. Cornelius' position had Thursday and Friday as rest days. On August 31st, the company wrote Smith instructing him to report for duty. This letter was received on September 1, a Saturday. September 3 (Monday) was Labor Day. On September 4, Smith completed a reinstatement form showing him recalled for regular employment.

The question before this Division is—What was Smith's status on Labor Day. Because he had not yet reported in response to carrier's instructions, we conclude that he had not yet been "regularly assigned", as required by the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3131.

The findings clearly show that claimant was working immediately preceding the following Labor Day. This being the case claimant met the requirements of Section 3 of Article II of the National Agreement of August 21, 1954, which agreement provides in substance that when a holiday falls on a workday of the work week of the employe, such employe shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which assigned. Employes who possess employment rights under the schedule agreement are entitled to the eight (8) hours holiday pay whether they are working their regular assignment or whether they are working on temporary

assignments. Having qualified for holiday pay under the National Agreement of August 21, 1954 the claimant should have received the pay specified in that agreement for holidays.

James B. Zink

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner