Award No. 5062
Docket No. 4055
2-TC-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Tennessee Central Railway Co. violated the August 19, 1960 agreement, when it failed to allow holiday pay to Machinists G. L. Ramsey and W. H. Bowling, and Machinist Helpers M. L. Killingsworth and R. E. Jackson, Jr., hereinafter referred to as the claimants, for Labor Day, September 5, 1960.

2. That the carrier be ordered to compensate each of the claimants one day's pay at the applicable rate for Labor Day, September 5, 1960.

EMPLOYES' STATEMENT OF FACTS: The Tennessee Central Railway Co., hereinafter referred to as the carrier, maintains a shop at Nashville, Tennessee, where Machinists G. L. Ramsey (seniority date May 23, 1960), Machinist W. H. Bowling (seniority date – June 13, 1960), and Machinist Helper M. L. Killingsworth (seniority date – May 12, 1942), and Machinist Helper R. E. Jackson, Jr. (seniority date – May 12, 1942), hereinafter referred to as the claimants, were regularly employed, and assigned on positions in accordance with their respective class and standing on the seniority roster.

The carrier laid the claimants off at the close of their shift on September 1, 1960. The claimants were restored to service on October 3, 1960. Labor Day (September 5th), 1960, was a holiday for which the claimants were entitled to receive eight hours' holiday pay. The carrier failed to make the payment and subsequently refused to allow the claim when it was appealed on November 4, 1960, to Mr. Knott, supervisor of wages, and denied by him on December 19, 1960. The agreement effective October 1, 1922, as subsequently amended, with specific reference to the August 19, 1960 agreement, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the 1960 Labor Day holiday, which was celebrated on Monday, September 5, 1960,

day rule, "pursuant to the rules of the applicable agreement", must continue to be followed by both employes and carrier. Said Article IV is, in fact, the only rule of the agreement under which a furloughed employe may be considered as available for service between date of furlough and date of return to service upon recall under the provisions of Rule 21, — and that it places the responsibility squarely upon furloughed employes themselves to choose to be, or not to be, available for service during furlough is made crystal clear by the language thereof from beginning to end.

Inasmuch as the furloughed claimants in this case admittedly did not signify in the manner provided in paragraph 2 of said Article IV that they would be available for service of any kind on Friday, September 2, and Tuesday, September 6, 1960, such inaction on their part under said Article IV constituted due notice to carrier that they were not to be considered available for any kind of service on the two qualifying days referred to, and that they were in fact laying off of their own accord, either or both such circumstances constituting a definite and effective bar to entitlement to holiday pay under the provisions of the holiday rule.

In conclusion, carrier submits to your honorable board that the governing rules of the agreement fully support its position that claimants were properly considered as not available for service on Friday, September 2, and Tuesday, September 6, 1960, and are, therefore, not entitled to holiday pay for Labor Day, September 5, 1960.

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 waived right of appearance at hearing thereon.

The issue herein involves the holiday dispute for Labor Day, September 5, 1960, as to whether or not claimants were "available for service" within the intent and meaning of Section 3 (ii) and the "Note" therein of Article III of the '60 Agreement.

Carrier's position is that Article IV of the August 21, 1954 Agreement, which supplements Rule 21 of the Agreement between the parties, is the rule referred to in said "Note": ". . . pursuant to rules of the applicable agreement . . ." and that failure of claimants to notify the proper officer in writing, with copy to the local chairman, of their availability and desire to be used for relief work, prevents claimants from being considered "available for service" as required by said Section 3, Article III of the '60 Agreement. This contention of Carrier was rejected by this Division in Award 5061.

Carrier further argues that although claimants Ramsey and Killingsworth were notified to return to work October 3, 1960, Ramsey did not return to service until October 10, 1960 because he was working elsewhere, and Killingsworth did not return to work until October 5, 1960 because October 3

and 4 were his rest days. There is no contention that claimants Jackson and Bowling failed to return to work when called on October 3, 1960.

In reply to the above contention of Carrier in regard to Claimant Ramsey not reporting to work until October 10, 1960, the Organization answers by saying that claimant Ramsey's failure to report on October 3, 1960, the day he was called for service by Carrier, is immaterial and irrelevant and does not make claimant Ramsey "unavailable" for service on the last day of his assignment preceding the holiday.

We feel it is material and relevant as to whether or not an employe, such as claimant Ramsey and any other employe, failed to report for service when called by Carrier. This Board has previously held that the test to determine "availability" of claimant for service is whether or not Carrier called an employe for service and the employe failed to respond to such a call for service.

Therefore, this Board is of the opinion that inasmuch as claimant Ramsey failed to respond to a call for service from Carrier, he was not "available for service" as defined in the "Note" in Section 3, Article III of the '60 Agreement, and his claim must therefore be denied.

As to Claimant Killingsworth not reporting for work until October 5, 1960 because of his rest days falling on October 3, 1960 (the day he was called for service by Carrier) and October 4, 1960, we feel that he should not be penalized for these days being his rest days. He did report immediately when his rest days were completed. Therefore, the fact that he did not return until October 5, 1960, two days after his call for service from Carrier, did not make him in this instance "unavailable for service" as defined in the "Note" in said Section 3, Article III of the '60 Agreement.

It is thus the opinion of this Board that the claim of claimant Ramsey will be denied, and the claims of Bowling, Killingsworth and Jackson will be sustained.

AWARD

(a) Claim of G. L. Ramsey denied.

(b) Claims of W. H. Bowling, M. L. Killingsworth and R. E. Jackson, Jr. sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1967.

[For Carrier Members' dissent – see Award 5061]

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