

Award No. 5066

Docket No. 4115

2-RF&P-CM-'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. 41, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the controlling agreement, particularly Article III of the August 19, 1960 National Agreement the Carrier improperly denied the Carmen employees named below, holiday pay for Labor Day, September 5, 1960.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen A. A. Adams, D. R. Borkey, R. M. LaTouche, T. A. Samuel, Jr., F. W. Taylor, C. E. Collins, J. D. Childers, R. L. Delbridge, V. L. Martin, E. H. Newton, C. W. Powell, C. E. Powers, R. W. Mills, N. F. Medford, W. M. Farthing, M. L. Stone, J. C. Leitch, J. W. Shepperson, S. J. Basinger, F. L. Lane, C. L. Carison, J. B. Mills, T. R. Newton, S. C. Sims, eight (8) hours each for September 5, 1960, at the Carmen straight time applicable rate of pay account of said violation.

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.

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

Claimants (24 Carmen) were furloughed at close of the workday on September 5, 1960 because of a strike against the Carrier. Claim is for holiday pay for Labor Day.

We agree with Carrier that the question involved in this claim is whether or not Claimants were "available for service" on the workday following the holiday and were thereby entitled to holiday pay under the provisions of Article III of the August 19, 1960 Agreement.

Carrier's position is that Claimants were not "available for service" on the workday immediately following the holiday because of the failure of Claimants to notify the proper officer of the Carrier in writing, with copy to the Local Chairman, of their availability and desire to be used for relief work on regular positions during the absence of regular occupants in accordance with the 1st and 2nd paragraphs of Rule 43 of the applicable Shop Crafts' Agreement; and therefore Claimants were not "available for service" in accord with the specific requirements of Article III, Section 3, of the '60 Agreement.

Rule 43 provides:

"The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 hereof their desire to be so used.

Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work."

Rule 43 is similar to Article IV of the August 19, 1954 Agreement, which similarly provides for use of furloughed employees by Carrier for relief work provided said employees notify the proper officer of the Carrier in writing, with copy to the Local Chairman, of their availability and desire to be used for such work.

This Division rejected such contention of Carrier in regard to determining "availability" under Section 3, Article III, of the '60 Agreement in Award 5061, and therefore the claimants, having met the necessary requirements of Article III of the '60 Agreement for holiday pay, these claims will be sustained.

AWARD

Claims 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.

[See Award 5061 for Carrier Members' dissent.]

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