



Award No. 5076

Docket No. 4266

2-CofG-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. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements, Machinist M. L. Conner, E. W. Dixon, and Helper Hampton A. Williams were improperly denied holiday pay for Christmas Day, December 25, 1960 (observed Monday, December 26).

2. That accordingly the Carrier be ordered to properly apply the agreements and compensate the above-named machinists and helper for Christmas Day, December 25, 1960, a holiday, in the amount of eight (8) hours' pay, each, at the pro rata hourly rate.

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 employees 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.

This claim involves holiday pay for Christmas Day, December 25, 1960, which holiday was observed on Monday, December 26, 1960.

The sole issue to be determined in this dispute is whether or not Claimants were "available for service" in accord with the "Note" in Section 3, Article III of the August 19, 1960 Agreement.

Similar language is found in Article 4 of the November 5, 1954 Agreement, between the parties to this dispute as is in the August 21, 1954 National Agreement. Carrier's contention that Claimants had to comply with requirements of said Article 4 of the November 5, 1954 Agreement before being "available for service" as required in the "Note" in Section 3, Article III of '60 Agreement, was rejected by this Division in Award 5061.

Carrier further argues that the Memorandum of Agreement, dated November 15, 1957, between the parties to this dispute, conclusively shows that Claimants were not "available for service" within the intent and meaning of the "Note" in Section 3, Article III of '60 Agreement. The Memorandum of Agreement of November 1, 1957 reads as follows:

"It is agreed and understood that in Rule 25, the paragraph immediately following the word 'INTERPRETATION' on page 18 of the current Shop Crafts' Agreement is hereby changed to read as follows:

'INTERPRETATION

In order to clarify the words "a reasonable time" as contained in the third paragraph of this rule, it is agreed that the term "a reasonable time" will be considered to mean that they will have five (5) days from the receipt of notification by Registered or Certified Mail in which to notify Management in writing by Registered or Certified Mail or telegram of their intention to return to work, or forfeit their seniority; with an additional ten (10) days in which to return to work. The additional ten (10) days is only to be used to work out a notice where necessary to an outside employer, get moved back to home point from another point, place or city; or some other equally reasonable reason. This understanding is only to designate the number of days which will be considered as "a reasonable time" in which to report and in which to return to service; and does not in any way affect the other provisions of this rule.'

Signed this 15th day of November, 1957, at Savannah, Georgia."

We do not agree with Carrier's argument that because of the Memorandum of Agreement of November 15, 1957, Claimants were not "available for service" because they were not required to return to service immediately when called. The test is not whether Claimants did not have to respond to a call, but whether Carrier called and Claimants failed to respond to such a call for service. There is no evidence that Claimants herein failed to respond to a call for service by Carrier, and therefore, inasmuch as Claimants having met all the other requirements for said holiday pay, this claim will be sustained.

AWARD

Claim 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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