

**Award No. 5091
Docket No. 4155
2-CMStP&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. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the applicable agreement the carrier improperly denied Carman Hector Fraser compensation for the September 5, 1960 holiday.

2. That accordingly the carrier be ordered to compensate the aforesaid claimant in the amount of eight (8) hours at mechanic's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Hector Fraser, hereinafter called the claimant, was employed as a regularly assigned carman, with a work week of Monday through Friday, in the car department at Milwaukee, Wisconsin, by the Chicago, Milwaukee, St. Paul & Pacific R.R. Co., hereinafter called the carrier. The claimant has a seniority date of carman helper of May 7, 1952. He was working in the capacity of upgraded carman when he was laid off by the carrier at the close of his shift on September 2, 1960.

The claimant had compensated service on the last day of his work week preceding the holiday, but was prevented by the carrier from working on the first day of his assignment following the holiday.

Labor Day, 1960, was a holiday for which the claimant was entitled to receive eight hours' holiday pay, because he met all of the qualifications. The carrier failed to make the payment even though the claim was handled through all stages on the property, including the shop superintendent, who declined the claim, and Assistant to Vice President S. W. Amour, who declined the claim.

The agreement effective September 1, 1949, as subsequently amended, with specific reference to the August 19, 1960 agreement, is controlling.

qualify for holiday pay, must, among other things, either receive compensation for service paid by the carrier on the work day preceding and following the holiday or be "available for service" and in view thereof the carrier further submits that the employees cannot consider furloughed Carman Fraser "available for service" for holiday pay purposes when they do not consider him "available for service" on temporary vacancies and/or relief work on a day to day basis.

Inasmuch as Claimant Fraser was not, according to the employees, "available for service" on the work day following the holiday, September 5, 1960, unless we recalled and used him on that day plus 4 more consecutive days or, in other words, unless we recalled him for not less than 5 days service, the Carrier submits that Claimant Fraser was not "available for service", as that term is used in Article III of the August 19, 1960 Agreement, on the work day following the September 5, 1960 holiday because it is the carrier's position that in order to be considered "available for service" Claimant Fraser must have been willing to respond for service on temporary vacancies and/or relief work on a day to day basis, and not being "available for service" on a day to day basis it is the carrier's further position that Claimant Fraser did not qualify for nor is he entitled to holiday pay for the September 5, 1960 holiday under the provisions of the holiday pay rule.

There is absolutely no basis for the instant claim and the carrier respectfully requests that the claim 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.

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

The issue herein involves the question as to whether or not Claimant was "available for service" on the workday immediately following the Labor Day Holiday of September 5, 1960.

Carrier's position is that in order to be considered "available for service" under the requirements of Section 3, Article III of the '60 Agreement, Claimant herein must have been willing to respond for service on temporary vacancies and/or relief work on a day to day basis; that by virtue of Rule 27(e) of the Shop Crafts Agreement, governing the parties to this dispute, furloughed employees cannot be recalled to service on a day to day basis, thus precluding Claimant from qualifying as "available for service".

Rule 27(e) reads as follows:

"Employee restored to service will not be laid off again without the five (5) days' advance notice provided in this rule."

We do not agree with Carrier's contention that Rule 27(e) precludes Claimant from being "available for service" in accord with the requirements

of Section 3, Article III of the '60 Agreement. There is nothing in Article III of '60 Agreement that specifies that Rule 27(e) is the sole controlling rule of the applicable agreement that determines "availability" as set forth in said agreement. Where Claimant herein did not lay off of his own accord, the test to be applied in this situation to determine "availability" as set forth in "Note" in Section 3, Article III of '60 Agreement, is whether or not Carrier called the Claimant for service. If Carrier did call Claimant and he failed to respond to said call, then Carrier would not be in violation of the agreement. But, here, where Carrier did not call Claimant for service and Claimant did not lay off of his own accord, then Claimant was "available for service" and thus met the necessary requirements of Section 3, Article III of '60 Agreement and the claim must therefore 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.