



Award No. 5097

Docket No. 4195

2-MP-FO-'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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Laborers R. L. Thompson, J. W. Pierce, W. Klienstruber, R. A. Patterson, D. L. Thornhill, V. C. Hampton, H. Since and C. R. Worley were improperly compensated by the Missouri Pacific Railroad Company for the holiday, Monday, January 2, 1961, DeSoto, Mo.

2. That Rule 9, Section 1(a) of the agreement was violated when Carrier Superintendent failed to comply with said rule.

3. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the aforementioned employees in the amount of eight (8) hours each at the straight time rate for the New Years Day Holiday, Monday, January 2, 1961.

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.

The issue herein as to holiday pay for January 2, 1961 involves the question of furloughed Claimants being "available for service" as referred to in the "Note" in Section 3, Article III of the August 19, 1960 Agreement

Carrier's position is that furloughed employees cannot be forced to respond to a call for work, but only can be compelled to return to work pursuant to Rule 16(c) of the Firemen and Oilers' Agreement, which provides:

"RULE 16.

REDUCTION OF FORCES

(c) When employees laid off by reason of force reduction desire to retain their seniority rights they must file with the proper officers and local committeemen their address and any change of address. Failure of employee to return to service within fifteen (15) days of notification will cause forfeiture of seniority."

Carrier contends, in view of said Rule 16(c), that when forces are restored, Carrier is required to give employees fifteen (15) days from the date notified in which to report; that once forces are restored in accord with said Rule 16(c), those forces cannot be reduced without Carrier giving four (4) working days' notice to the men affected in accord with the provisions of Rule 16(b), which reads as follows:

"(b), If the force is to be reduced, four working days' notice will be given the men affected before reduction is made and lists will be furnished the general and local committees except no more than sixteen hours' advance notice is required before abolishing positions or making force reductions under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed."

Carrier concludes that pursuant to said Rules 16(c) and 16(b), which it claims are "rules of the applicable agreement", Claimants herein were not required to respond to a call for service and thus were not "available for service" as defined in the "Note" following Section 3(ii) in Article III of the Agreement of August 19, 1960.

As we pointed out in Award 5095, where as here an employee did not lay off of his own accord, the test to determine "availability" as referred to in said "Note" is not whether an employee was not required to respond to a call for service, but whether the employee failed to respond to a call for service by the Carrier. No such contention is made in the instant case at hand that Carrier made a call for service to Claimants. Therefore, Claimants, not having laid off of their own accord and being "available for service" within the intent and meaning of the applicable Section 3(ii) of Article III August 19, 1960 Agreement, 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.
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