

Award No. 5099

Docket No. 4217

2-IC-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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the current agreement the following named employees were improperly denied holiday pay for December 26, 1960 and January 2, 1961, which are legally recognized holidays:

J. Matus	Carman Helper
M. Lopez	Carman Helper
J. Pedraza	Carman Helper
M. Saucedo	Carman Helper
P. Mata	Upgraded Carman
M. Cantu	Upgraded Carman

(b) That accordingly the Carrier be ordered to compensate the aforementioned employees each in the amount of eight (8) hours pay at the pro rata rate for December 26, 1960 and 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 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 waived right of appearance at hearing thereon.

Two issues exist in this claim for holiday pay for Christmas Day, celebrated on December 26, 1960 and New Year's Day, celebrated on January 2,

1961, namely, (1) whether Claimants received compensation on 11 or more of the 30 calendar days preceding the January 2, 1961 holiday, and (2) whether Claimants were "available for service" on the workdays preceding and following the holidays in question.

The Organization argues that inasmuch as Claimants were "regularly assigned" employees, Claimants were not required to have received compensation on 11 or more of 30 days preceding the holiday. This argument was rejected by this Board in Third Division Awards 14515, 14625, 14635 and 15017 in which furloughed employees whose lay-off period extends beyond the holiday are considered as "other than regularly assigned" employees. Therefore, inasmuch as Claimants failed to meet the requirements of the 2nd paragraph of Section 1 of Article III of the August 19, 1960 Agreement: "... provided (1) compensation for service paid him by Carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday ...", their claim for holiday pay for January 2, 1961 is denied.

In regard to the question of "Available for service" within the meaning of Section 3(ii) of Article III of the August 19, 1960 Agreement as defined in the "Note" to said Section 3: "... or does not respond to a call, pursuant to the rules of the applicable agreement, for service", Carrier contends that because of Rule 28, governing the procedure in restoring furloughed employees to service, an Employee does not have to respond to a call for service immediately because of the "Note" in said Rule 28: "Note: The words 'if available within a reasonable time' in third paragraph of this Rule are interpreted to mean 'within fifteen (15) days from date of letter or telegram sent to employee's last filed address, unless proof of disability is furnished within said limits.'"

As we have pointed out in Award 5095, where the employee does not lay off on his own accord, the test to determine "availability" is not that an employee cannot be required to respond to a call for service, but whether Claimants did or did not respond to a call for service from Carrier. Inasmuch as Claimants did not lay off of their own accord and Carrier did not call Claimants for service, Claimants were "available for service" within the intent and meaning of Section 3(ii) of Article III of the '60 Agreement and therefore their claim for holiday pay for the December 26, 1960 holiday must be sustained.

AWARD

- (a) Claim sustained as to holiday pay for December 26, 1960.
- (b) Claim denied as to holiday pay for January 2, 1961.

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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