



Award No. 5103

Docket No. 4510

2-N&W-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. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier violated Article 3 of the August 19, 1960 agreement when they denied holiday pay December 25, 1961 and January 1, 1962 to the following employees,

G. W. Poston	P. Spradlin
C. M. Bishop	L. J. Burton
H. F. Yost, Jr.	W. R. Bowling
R. E. Simmons	P. M. Presley
F. R. Walker	K. W. Walk
	B. F. Akers

employed at Bluefield Shop, Bluefield, West Virginia.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Claimants 8 hours pay for each of the holidays, namely, December 25, 1961 and January 1, 1962.

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 employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

That 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 claim herein in regard to Christmas Day, December 25, 1961, and New Year's Day, January 1, 1962, holiday pay involves two issues: (1) were all Claimants "available for service" under the provisions of Section 3,

Article III of the 1960 Agreement, and (2) did Claimants Bishop and Walk have the necessary 11 or more compensated days within the 30 calendar days preceding both holidays and did Claimant Poston have the necessary 11 or more compensated days within the 30 calendar days preceding the January 1, 1962 holiday, so as to qualify for holiday pay.

The Organization's reply to Carrier's assertion that Claimants Bishop, Walk and Poston did not have the necessary "11 or more compensated days" within the 30 days preceding the holiday is (a) that inasmuch as Claimants were regularly assigned employees, the provisions of "11 or more compensated days within the 30 day period prior to the holiday" does not apply in this case, (b) that the issue of having "11 or more compensated days" was not raised on the property, and (c) that Claimants received vacation pay during the required "30 day period" permitting them to have the necessary "11 or more compensated days".

The Carrier failed to submit any evidence to substantiate the allegation that Claimants did not meet the "11 or more compensated days" requirement of Article III of the 1960 Agreement. This Division has held on numerous occasions that the burden of proof is on the petitioning party to prove an alleged violation with competent evidence in support thereof, and that mere allegations are not sufficient to prove that the Agreement was violated. Further, the Organization has shown by competent evidence that "vacation pay" plus the workdays actually worked during the 30 day period satisfy the "11 or more compensated days" requirement of the Agreement. See Award 5102. Finally, there is no evidence to show that the alleged violation in regard to "11 or more compensated days" requirement was raised on the property. Therefore, the Carrier's contention as to Claimants Bishop, Walk and Poston not having the necessary "11 or more compensated days" within the 30 calendar days preceding the holiday in question, must be rejected.

The other issue as to "availability" involved herein, was decided in Award 5061, and since said Award is controlling in the instant case, it is the opinion of this Board that Claimants met the "availability" test, and therefore Claimants having met all the pertinent requirements of Article III of '60 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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