



Award No. 5108

Docket No. 4298

2-GN-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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, furloughed Roundhouse Laborer Gilbert Stein, Superior, Wisconsin, was denied eight hours holiday pay for February 22, 1961.

2. That accordingly the Carrier be ordered to pay the aforesaid laborer eight hours holiday pay for the above mentioned date.

EMPLOYEES' STATEMENT OF FACTS: Mr. Gilbert Stein, hereinafter referred to as the claimant, was first employed as a roundhouse laborer in the Superior, Wisconsin roundhouse of the Great Northern Railway Company, hereinafter referred to as the carrier, on July 12, 1941. While on furlough in the spring of 1960, he was called back to work on March 16, and was employed continuously, filling assignments of regular employees who were absent from work, until February 9, 1961, when he was again furloughed. Claim was made for eight hours holiday pay for Mr. Stein for February 22, 1961, under the provisions of Article III of the agreement of August 19, 1960, pertaining to other than regular employees which was refused by the carrier.

The dispute was handled with carrier officials designated to handle such affairs, all of whom declined to adjust the dispute.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: During the period of March 16, 1960, through February 9, 1961, the claimant was employed as other than a regularly assigned employee, filling the positions of certain regular employees who were absent from work because of illness or for other reasons. The last such vacancy ended as of February 10, 1961, and on that date claimant was furloughed.

submitted. Therefore, it is obvious that the claimant was neither available pursuant to the rules of the applicable agreement, nor was he in fact ready, willing and able to work.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The claimant did not satisfy either of the qualifications contained in Article III, Section 3 of the August 19, 1960 National Agreement applicable to "other than regularly assigned employees," because he received no compensation for service paid by the carrier on the workday preceding and the workday following the holiday, and was not "available" on those days "pursuant to the rules of the applicable agreement."

2. The allegation of the claimant that he was in fact ready, willing and able to perform service on the workday preceding and the workday following the holiday is of no probative value as evidence; is irrelevant because an employee must be "available" for service pursuant to rules of some agreement which actually provides for such availability for service and obligates the employee to respond; and because the claimant did not indicate any willingness or readiness to perform service under Rule 6(d) or to transfer to another point under Rule 9.

3. Neither the organizations which demanded expansion of the August 21, 1954 holiday provision, nor Emergency Board No. 130 which considered those demands, indicated any intent to provide bonus holiday pay for employees who were furloughed twelve days prior to a holiday for an indefinite and extensive period, for reasons other than to avoid holiday pay.

4. Emergency Board No. 130 recognized that the parties had not abandoned the doctrine that holiday pay is for the purpose of maintaining take-home pay, and, therefore, granting holiday pay to the claimant would violate that doctrine.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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 waived right of appearance at hearing thereon.

This February 22, 1961 Washington's Birthday Holiday claim involves the sole issue of "available for service" under Section 3(ii) of Article III of the '60 Agreement.

Carrier's position is that because of Rule 7(e), Claimant was not obligated to return to service or respond to a call for 15 days and was then

not "available for service" within the intent and meaning of said Section 3(ii) of Article III of '60 Agreement. Carrier further holds that Rules 6(d) and 9 provide a furloughed employe, such as Claimant herein, with the opportunity to request temporary work or transfer to another point, even though it does not require him to be used or that he actually return to work when it is so offered to him; and therefore Claimant's failure to make a request for a temporary vacancy under Rule 6(d) or transfer to another point under Rule 9 clearly proves that Claimant was not "available for service".

As we have pointed out previously, the test to determine "availability" under Section 3(ii) of Article III of '60 Agreement is not whether Claimant was not obligated to return to service or not required to respond to a call for service but whether Carrier actually called Claimant for service. Further, Claimant's failure to comply with Rules 6(d) and 9 does not indicate or prove that he was not "available for service" inasmuch as said Rules are not the "controlling rules" of the applicable agreement. Claimant could have been called for service without him first having had to comply with said Rules 6(d) and 9.

Therefore, it is the opinion of this Board that Claimant met the applicable provisions of Section 3, Article III of '60 Agreement, and 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.