

Award No. 5109

Docket No. 4307

2-GN-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. 101, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the Carrier failed to compensate Carmen Jack McCann, Leo Kimmett, Marvin McDonald, and Paul Meyer each for holiday pay of eight hours for December 26, 1960 and January 2, 1961.

2. That accordingly, the Carrier be ordered to compensate the abovenamed Carmen eight (8) hours pay for December 26, 1960, and eight (8) hours pay for 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 employes 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 waived right of appearance at hearing thereon.

The Carrier's position in regard to the issue of "available for service" under Section 3 (ii) and the "Note" therein of Article III of '60 Agreement, that claimants were not "available for service" on the workday preceding and the workday following the two holidays here in question because of Rule 5(d) which does not obligate claimants to respond to a call for service from Carrier for a period of 15 days after such a call, has been fully discussed in Award 5108, and for the reasons stated in that Award, we are compelled to conclude that claimants were "available for service" on the workdays preceding and following the two holidays involved herein.

Carrier raises the issue of claimants having complied with the second paragraph of Section 1 of Article III of the '60 Agreement: "... provided

(1) compensation for services paid him by Carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday . . ." and therefore are not entitled to the claims of New Year's Day holiday pay. Carrier does not raise this objection of failure to meet said 11 or more compensated days in regard to claim for the Christmas Day holiday pay.

Carrier contends that, if this Division grants claimants pay for the Christmas holiday, this holiday pay cannot be considered as "compensation for service" within the intent and meaning of said 2nd paragraph of Section 1, Article III of the '60 Agreement, and in support thereof cites Referee Wayne L. Morse's conclusion in regard to qualifying for the 160 day vacation requirement, that not the pay received by an employe for non-work on a Sunday or holiday, but the actual performance of service for the Carrier determines whether a given day can be counted toward the 160-day vacation requirement.

In order to decide this second issue as to "11 or more compensated days", we must first decide if claimants are entitled to the Christmas holiday pay. Inasmuch as we have concluded herein that claimants were "available for service" within the intent and meaning of Section 3 (ii) and the "Note" thereunder of Article III of the '60 Agreement, the claim as to Christmas holiday pay must be sustained.

Secondly, in regard to the "compensation for service credited to 11 or more of the 30 calendar days" requirement, we do not agree with Carrier that Referee Morse's conclusion in regard to meeting the 160-day vacation requirement is analogous to the "11 or more compensated days" requirement confronting this Division in this dispute.

This Board held in Third Division Award No. 14816 that the August 19, 1960 Agreement does not require that an employe actually has to render service or work during the 30 calendar days immediately preceding the holiday. All an employe has to prove is that compensation for services paid to him by Carrier is credited to 11 or more days of the 30 day calendar day period.

Therefore, it is the conclusion of this Division that the Christmas Day Holiday pay granted to claimants herein is "compensation for service" paid them by Carrier so as to be credited toward the 11 or more compensated days requirement, and that such Christmas holiday pay herein is determinative as to whether said period holiday can be counted toward the 11 or more compensated days requirement.

Having met the 11 or more compensated days requirement as well as all the other applicable provisions of the August 19, 1960 Agreement, this claim must 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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