Award No. 5131
Docket No. 4617
2-GN-FT-'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 (Federated Trades)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, furloughed Dale Street and Jackson Street Shop employes (names attached hereto) were denied eight (8) hours holiday pay for Labor Day, September 3, 1962.

2. That accordingly the Carrier be ordered to pay the aforesaid employes eight (8) hours holiday pay for the above mentioned date.

EMPLOYES' STATEMENT OF FACTS: The Dale Street and Jackson Street Shop employes, listed under number 1 of the Claim of Employes and hereinafter referred to as the claimants, are all employed in their respective craft and class by the Great Northern Railway Company, hereinafter referred to as the carrier, in its Mechanical Department facilities located at Dale Street and Jackson Street in St. Paul, Minnesota. Claimants as of August 23, 1962 were regularly assigned in their craft and class at Dale Street and Jackson Street Shops.

Claimants were furloughed in a force reduction effective August 24, 1962. Labor Day, a holiday under the terms of the controlling agreement, fell on Monday, September 3, 1962, and carrier has declined to compensate claimants therefor in accordance with the provisions of article III of the August 19, 1960 agreement.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

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

3. Many of the claimants did not satisfy one or more of the preliminary requirements contained in article III, section 1 of the August 19, 1960 national agreement applicable to "other than regularly assigned employes," because compensation for service was not credited to 11 of the 30 calendar days immediately preceding the holiday, and some failed to receive 11 days compensation of any type during that period.

4. Some of the claimants received vacation pay for the holiday.

5. None of the claimants satisfied either of the qualifications contained in article III, section 3 of the August 19, 1960 national agreement applicable to "other than regularly assigned employes," because they received no compensation for service paid by the carrier on the workday preceding or the workday following the holiday, and they were not "available" on those days "pursuant to the rules of the applicable agreement."

6. The allegation of the claimants that they were 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 employe must be "available" for service pursuant to rules of some agreement which actually provides for such availability for service and obligates the employe to respond; and because the claimants did not indicate any willingness or readiness to perform service under Rule 6(d) or to transfer to another point under rule 9(a).

For the foregoing reasons, the carrier respectfully requests that the claims of the employes be denied.

All of the evidence and data contained herein has been presented to the duly authorized representative of the employes.

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 issues herein in regard to this September 3, 1962 Labor Day holiday pay dispute are: (a) did a number of the Claimants herein fail to have 11 or more "compensated for service" days credited in the 30 calendar days immediately preceding the holiday; (b) are the Claimants, who were on vacation on the holiday entitled to receive said holiday pay, and (c) were Claimants "available for service" on the workday preceding and following the holiday in question.

In regard to the first issue of meeting the requirement of the 2nd paragraph of Section 1, Article III of '60 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 . . .", the Carrier contends

that 13 named Claimants listed on page 13 of Carrier's submission failed to have any type of compensation credited and that 99 Claimants listed on page 13 through 17 of Carrier's submission, had less than 11 days of service and also received vacation pay during said 30 day period, which vacation pay Carrier asserts is not "compensation for service" credited to 11 or more days as required by said Section 1, Article III of '60 Agreement.

The Organization's reply to Carrier's contention that 13 named Claimants failed to have any type of "compensation for service" credited in the 30 day period preceding the holiday is that said contention was not raised on the property and was for the first time raised in their initial submission to this Board, and therefore the Organization concludes that this Division cannot consider such a contention as to the failure of the 13 named claimants to have the necessary minimum compensated days within the 30 day period.

We agree with the Organization that this Division cannot consider contentions or charges which were not made during the handling on the property. This is a well established rule of this Division.

Inasmuch as the record does not show that this contention of Carrier was raised on the property, therefore this Division cannot consider the contention of the Carrier that the said 13 Claimants named in their initial submission to this Division did not have any "compensation for service" during the 30 day period preceding the holiday.

The Organization also objects to the contention of Carrier being raised for the first time before this Division, in regard to the 99 Claimants listed by Carrier on pages 13 through 18 of their initial submission to this Division, whom Carrier claims did not have 11 or more compensated days within the 30 day period preceding the holiday, although all these claimants had vacation pay during said 30 days period, if counted as "compensated" days, which Carrier denies, would give Claimants the necessary "11 or more compensated days. The Organization bases its objection on the grounds that this contention was not raised on the property and therefore cannot be considered by this Division. A close examination of the records reveals that this contention or charge was nowhere raised on the property, and lacking that evidence, this Division cannot consider such contention and therefore we must reject this contention of Carrier in regard to any of said 99 Claimants lacking the necessary 11 or more required compensated days during the 30 day period prior to the holiday.

It also clearly appears from the record that the further contention of Carrier in regard to the 7 Claimants, listed on page 18 of its submission to this Division, being paid vacation pay for said September 3, 1962 holiday and thus Carrier not being liable to pay said 7 Claimants twice for the holiday pay and vacation pay, was not raised on the property by the Carrier, and therefore this Division cannot consider such contention.

The issue then remains, were these Claimants "available for service" on the day preceding the holiday in accord with the requirements of 2nd paragraph of Section 3 and the "Note" therein of Article III of the '60 Agreement.

Carrier's position in regard to the "availability" of Claimants is that due to Laborers' Rule 7(e) (and identical Shop Crafts Rule 5(d)) Claimants

were not required to respond to a call for service from Carrier for 15 days; also that Rule 4(d) and 6 of Shop Crafts Rules were not complied with by Claimants for failure to request temporary work or transfer to another point and therefore Claimants were not "available for service" within the intent and meaning of applicable provisions of Section 3, Article III of the '60 Agreement.

This Division has previously held, that in determining "availability", it is not whether an employe was required to respond to a call. The test for determining "availability" is whether or not Carrier called an employe, such as Claimants herein, for service, and whether such an employe did or did not respond to such a call for service. Further, in regard to contention of Carrier that Rules 4(d) and 6 of the Shop Crafts Agreement are the controlling "rules of the applicable agreement", there is nothing in said Section 3, Article III of '60 Agreement that says said Rules are such, and further there is nothing in said Agreement that requires said Rules to be complied with by an employe in order to be considered "available for service".

Therefore, it is the opinion of this Division that Claimants herein were "available for service" within the intent and meaning of Section 3 (ii) and "Note" therein of Section 3, Article III of '60 Agreement, and not having laid off of their own accord and meeting all other requirements of Article III of the '60 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.

Printed in U.S.A.

Keenan Printing Co., Chicago, Ill.