

Award No. 5132

Docket No. 4740

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, 1962 and January 1, 1963 to the Claimant Car Repairer E. T. Musselman employed at Roanoke East End Shops, Roanoke, Virginia.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Claimant 8 hours pay for each of the holidays, namely December 25, 1962 and January 1, 1963.

EMPLOYEES' STATEMENT OF FACTS: The above mentioned employee, hereinafter referred to as claimant, was employed by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, at carrier's shops located at Roanoke, Virginia.

Claimant was regularly assigned and working at carrier's shop, Roanoke, Virginia.

On or about December 17, 1962, carrier posted notice on bulletin board furloughing a number of men at the close of business December 21, 1962, claimant was recalled to his regular assignment on January 2, 1963.

This dispute was handled with carrier officials designated to handle such cases who all declined to adjust same. The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that under language of article 3, section 1 and 3 of the August 19, 1960 agreement.

Section 1 reads,

"Subject to the qualifying requirements applicable to regularly assigned employees contained in Section 3 hereof, each regularly

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 were given due notice of hearing thereon.

Claimant was furloughed from his position as Car Repairer on December 21, 1962. He was recalled to work on January 2, 1963. He is making claim for two holidays, namely, Christmas Day, December 25, 1962 and New Year's Day, January 1, 1963.

The facts, which are not in dispute, are that claimant worked 10 days of the 30 calendar days immediately preceding the holidays in question, being absent from work on account of illness from October 9, 1962 to December 10, 1962.

The controlling issue in the instant dispute is whether or not claimant had compensation for services paid him by Carrier credited to 11 or more of the 30 calendar days immediately preceding two holidays, Christmas Day, December 25, 1962 and New Year's Day, January 1, 1963, as required by Paragraph 2, Section 1, Article III, of the August 19, 1960 Agreement: "... provided (1) compensation for service paid him by the Carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday ...".

The Organization contends that inasmuch as he was a "regularly assigned" employe, said provision does not apply and since he was available under the provisions of 2nd paragraph of Section 3, Article III, of the August 19, 1960 Agreement, he is entitled to pay for both holidays.

The contention that claimant was a "regularly assigned" employe was rejected in Third Division Awards 14515, 14625, 14635 and 15017. Therefore, inasmuch as claimant failed to meet the requirement of having 11 compensated days in the 30 calendar days immediately preceding the holidays in question, as required by said Paragraph 2, Section 1, Article III of the August 19, 1960 Agreement, this claim will be denied.

AWARD

Claim denied.

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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