

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11349  
Docket No. 11134  
2-B&O-CM-'87

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, when on the date of September 3, 1984, (legal holiday) Carrier arbitrarily deprived claimants herein of holiday pay to which they were entitled under the provisions of Rule 3 1/2 of the controlling agreement.

2. That accordingly, Carrier be ordered to compensate all claimants herein, eight (8) hours pay at the pro rata rate, that which they would have received had they been granted their holiday pay for September 3, (Labor Day), as per the agreement.

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 employes 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 dispute arose from the Claim of Carmen Tye, Webster, Cassidy and Baker that Carrier allegedly denied them eight hours holiday pay on September 3, 1984, in violation of the Agreement.

Carrier declined the Claim, noting that the Claimants either did not answer the telephone or refused to accept the work, and therefore did not qualify for holiday pay. Carrier further maintained that Claimant Webster was paid for the holiday and the claim on his behalf was moot.

The Organization takes the position that Carrier could not prove that a telephone call was made to Claimant Tye or Baker, and, thus, the Claimants were available for service on September 2, 1984. The Organization also contended that Claimant Cassidy qualified as a regular employee.

The Board has reviewed the record and the supporting Awards presented, and finds that the controlling question is whether or not Claimants were available for service pursuant to Rule 3 1/2. The record indicates that Claimants Tye, Cassidy and Baker were furloughed and performing service as Carmen at Queensgate Yard under the provisions of Agreement Rule 24 1/2. The record further shows that prior to the holiday, each Claimant had performed service on eleven days within the previous thirty.

With respect to Claimants Baker and Tye, Carrier asserts that they were not available for service the day preceding the holiday. In support thereof, Carrier proffered a copy of the Shop Log Book for the date of September 2, which shows that Claimants Tye and Baker were called but there was no answer. While the Organization denied that the calls were made, there was no evidence offered by the Organization to refute Carrier's Shop Log. Employees have the burden of affirmatively establishing their availability in order to establish their right to such benefits. (See Second Division Award 6505). Since reiteration of argument is not a substitute for probative and substantial evidence, the Claim with respect to Tye and Baker must be rejected.

The Organization's contentions with regard to Claimant Cassidy are similarly unpersuasive. Though it was asserted that Cassidy qualified as a regular employee and was entitled to holiday pay on that basis, no proof was offered to substantiate that assertion. Therefore, the Board must credit Carrier records which indicate that Claimant Cassidy had signed up for extra work under Rule 24 1/2, and was called on September 2 but refused to work. Thus, Cassidy is not entitled to holiday pay.

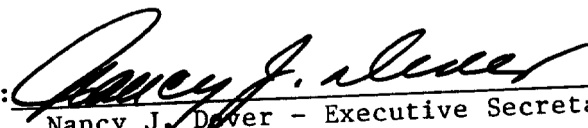
Finally, the Board will dismiss the Claim of Carman Webster, since from the evidence of record, he qualified for and was allowed holiday pay. Though the reason for the apparent confusion with respect to this Claimant is unknown, he clearly has no valid Claim before this Board.

A W A R D

Claim of Carmen Tye, Baker and Cassidy is denied. Claim of Carman Webster is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.