

Award No. 2711

Docket No. 2535

2-CofGa.-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Linemen and Groundmen Messrs. P. W. Lominack, F. D. Dacus, C. L. Melton, R. L. Allen, Jr., D. C. Hollon, A. A. Massey and J. L. Daugherty, Foreman were improperly compensated at the straight time rate for service performed on the following recognized Holidays, December 26, 1955 and January 2, 1956.

2. That the Carrier be ordered to additionally compensate each of the above named Claimants at the rate of time and one-half on the days in question.

EMPLOYEES' STATEMENT OF FACTS: Linemen and Groundmen Messrs. P. W. Lominack, F. D. Dacus, C. L. Melton, R. L. Allen, Jr., D. C. Hollon, R. A. Massey and J. L. Daugherty, Foreman, members of line gang No. 1, hereinafter referred to as the claimants, were required by the Central of Georgia Railway Company, hereinafter referred to as the carrier, to work their regular jobs on December 26, 1955 and January 2, 1956, and were compensated at the straight time rate therefor.

The claimants are regularly assigned Monday through Friday, with Saturday and Sunday as rest days.

December 26, 1955, and January 2, 1956, fell on a Monday, a work day of the regularly assigned work week of the claimants.

Compensation paid by the carrier was credited to the claimants' work days immediately preceding and following Monday, December 26, 1955 and January 2, 1956.

"Based upon an analysis of all of the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied."

There are many awards on this and other carriers which have long established that the burden of proof rests upon the petitioners. The employees cannot just say the agreement was violated—they must prove it.

SUMMARY

In this ex parte submission the carrier has shown that the employees are simply trying to add to the agreement something which is not there. The proper procedure is via Section Six Notice under the Railway Labor Act.

Further, that the employees have not handled this claim properly on the property as shown in the record and carrier's exhibits. The claim should be dismissed.

The carrier has shown that there has been no violation of the agreement, as alleged. The employees have not shown nor can they show that the rules agreement was ever intended to cover that which they are now demanding. The burden of proof rests upon the petitioners, and they must produce probative evidence which to date they have not produced.

The claim clearly has no merit whatsoever, and carrier urges the Board to render a denial award.

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.

The parties to said dispute were given due notice of hearing thereon.

The claimants state that they were improperly paid under Rules of the effective agreement for work performed on December 26, 1955, and January 2, 1956.

Christmas and New Year's Day are recognized by the effective agreement as Holidays on which employees will be paid Holiday pay when the Holiday falls on a work day of the work week of the individual employees.

The rule of the effective agreement provides for Holiday pay on recognized Holidays. This rule, however, is silent as to Holiday pay being paid to the employees on Observed Holidays. Christmas Day was December 25, 1955, and New Year's Day was January 1, 1956, and if these employees worked on December 26, 1955, and January 2, 1956, these days were not recognized Holidays under the effective agreement. Therefore, the employees were not entitled to Holiday pay for work performed on these days. This claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.