Award No. 2969
Docket No. 2240
2-SOU-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreements, the carrier improperly denied Machinist J. V. Deacy holiday pay for Christmas Day 1954 and New Year's Day, 1955.

2. That, accordingly, the carrier be ordered to properly apply the agreements and compensate Machinist J. V. Deacy for the aforesaid holidays for eight (8) hours at the pro rata rate.

EMPLOYES' STATEMENT OF FACTS: J. V. Deacy, hereinafter referred to as the claimant, is employed by the Southern Railway Company, hereinafter referred to as the carrier, as a machinist at the Birmingham, Alabama shops, with a seniority date of June 11, 1945.

On December 17, 1954, a notice of reduction in force was posted, in accordance with the rules of the controlling agreement, at the Birmingham shops. Claimant's name was shown on the notice and had the reduction in force gone into effect, it would have caused the claimant to be furloughed, however, on account of a number of other machinists taking vacations and otherwise requesting to be off, the proposed reduction, affecting the claimant, did not become effective and claimant continued to work.

Claimant was regularly assigned to the 11:00 P.M. to 7:00 A.M. shift, Thursday through Monday with rest days Tuesday and Wednesday, prior to the posting of the notice on December 17, 1954, and he continued to work the same hours and work week together with having the same rest days subsequent to the posting of the notice.

Claimant was not required to render service on either of the holidays and the carrier denied him holiday pay for both holidays.

The claimant worked his regular assigned shift on the work days immediately preceding and following each of the holidays.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective March 1, 1926, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: The employes contend that claimant is entitled to receive holiday pay for Christmas and New Year's Day in accordance with the provisions of Article II, Section 1 of the agreement of August 21, 1954, which reads as follows:

> "Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro-rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a work day of the work week of the individual employee:
>
> | | |
> |---|---|
> | New Year's Day | Labor Day |
> | Washington's Birthday | Thanksgiving Day |
> | Decoration Day | Christmas |
> | Fourth of July | |
>
> **Note:** This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays."

The holidays fell on a work day of the work week of the claimant.

It is submitted on the basis of the foregoing statement of facts in conjunction with the applicable rules of the aforesaid controlling agreement that the statement of claim is subject to be sustained by this Division and that Part 2 thereof is mandatory upon the carrier by reasons of the provisions of the controlling agreement, particularly Article II, Section 3 which states:

> "An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the work days immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the work day immediately following. If the holiday falls on the first work day of his work week, the last work day of the preceding work week shall be considered the work day immediately preceding the holiday.
>
> Compensation paid under sick-leave rules or practices will not be considered for purposes of this rule."

The claimant met the qualifications of the rule by working the work days immediately preceding and following the holiday.

The Board Has Denied A Similar Claim.

In Award No. 2052, Referee Douglass, the Second Division denied claim of a blacksmith and blacksmith helper for holiday pay under the agreement of August 21, 1954, by holding that:

> "This case, boiled down, presents one question for our determination. Were the claimants in the instant case 'regularly assigned' employes as contemplated by Section 1, Article II of the August 21, 1954 National Agreement and entitled to pay for holidays?
>
> The claimants had both been laid off as a consequence of a reduction in force. Both were notified to and did fill vacancies of regularly assigned men who were on vacations.
>
> The Presidential Emergency Board's recommendation was to the effect that regularly assigned employes should be able to maintain their regular amount of take home pay and still have the benefit of holidays. Employes who hold no regular assignments do not have a regular or usual amount of take home pay. Their work is dependent upon the occurrence of temporary vacancies, or work of a temporary nature.
>
> In the instant case the claimants had been removed from their regular assignments as the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employes. Following the claimants' separation from their regularly assigned positions, their take home pay from thence forward became irregular—dependent upon work of a temporary nature when such existed.
>
> The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein it is stated that '* * * each **regularly assigned** hourly and daily rated **employee** shall receive eight hours' pay * * *'. (Emphasis ours.) Thus, the agreement limits payment to regularly assigned employes and does not provide for payment to an employe who is temporarily filling a position."

Under the circumstances, the Board cannot do other than deny the claim.

Surely the Board cannot be a party to penalizing the carrier for being accommodating in permitting nine laid off machinists to work several days after being laid off in a force reduction.

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.

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

Claimant, Machinist J. V. Deacy, worked on the third shift, 11:00 P.M. to 7:00 A.M., at the Birmingham, Alabama Shops Thursday through Monday, with rest days Tuesday and Wednesday. At the close of business on December 22, 1954, claimant was listed as being laid off due to a reduction in force. Many machinists were on vacation at the time.

After December 22, 1954, claimant continued working as a machinist on the third shift from 11:00 P.M. to 7:00 A.M. through December 31, 1954.

Even though claimant was listed as being laid off at the close of business on December 22, 1954, he in fact was not laid off as he continued in his regular work.

Claimant did not work on the Christmas and New Year's Holiday, but did work on the work days immediately preceding and following the said holidays.

Claimant under all the facts was a "regularly assigned employe" within the meaning of Article II, Section 1 of the August 21, 1954 Agreement, and his claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.