Award No. 5064
Docket No. 4103
2-T&P-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. 121, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE TEXAS & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Texas & Pacific Railway Co. improperly denied 30 Carmen, 3 Carmen Apprentices, 3 Carmen Helpers, 2 Painters and 2 Painter Helpers 8 hours' pay for Christmas Day holiday, 1960.

2. That accordingly the carrier be ordered to compensate these employes hereinafter named in the amount of 8 hours at their applicable pro rata rate of pay for Monday, December 26, 1960.

A – Carmen

A. M. Goode	J. H. Harrison
J. N. Lee	E. L. Pyle
A. B. Cary	C. E. Murph
J. L. Chadwick	N. W. Parker
D. M. Cason	Billy Reel
W. C. Watson	T. T. Lee
Phillip Taylor	Rowson Peppers
S. O. Harris	A. J. Chapman
C. H. Sullivan	J. D. Cook
Louis Smith	H. S. Childress
I. S. York	E. W. Robb
Lawrence Soape	G. H. Hayner
J. L. Anderson, Jr.	C. C. Mooney
J. T. Wood	Thurman Furrh
R. A. Lawrence	W. A. Murph

B – Carmen Apprentices	C – Carmen Helpers
J. E. Madox	H. H. McCarty
B. B. Carswell	E. L. Edmond
B. G. Neely	J. D. Sullivan
D – Painters	**E – Painter Helpers**
R. E. Thomas	Sanders Johnson
J. J. LeBlanc	Homer Tucker

EMPLOYES' STATEMENT OF FACTS: The foregoing named regularly assigned employes, hereinafter referred to as the claimants, worked for the Texas & Pacific Ry. Co., hereinafter referred to as the carrier, in the carrier's car shops at Marshall, Texas.

The carrier made the election to issue a bulletin addressed to all mechanical department employes on December 21, 1960, which advised as follows:

> "Effective close of work, Sunday, December 25, 1960, the following listed employes will be furloughed, and who will turn in all company property, including Annual Passes."

Christmas Day holiday, 1960, was a holiday for which the claimants were entitled to receive eight hours' pay. The carrier failed to make the payment, and subsequently refused to allow the claim, even though the dispute was handled on the property through all stages.

Following the denial of this claim by Chief Mechanical Officer J. O. Fraker, the claim was appealed to director of personnel Mr. R. G. French. Mr. French declined the claim under date of April 10, 1961.

The agreement effective September 1, 1949, as subsequently amended, with specific reference to the August 19, 1960 agreement, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the 1960 Christmas Day holiday is a day for which the claimants are entitled to receive eight hours' holiday pay under the clear and unambiguous provisions of the rules governing holiday pay, reading as follows:

"ARTICLE III. HOLIDAYS

> Article II, Sections 1 and 3 of the Agreement of August 21, 1954, are hereby amended, effective July 1, 1960, to read as follows:
>
> Section 1. Subject to the qualifying requirements applicable to regularly assigned employes contained in Section 3 hereof, each regularly assigned hourly and daily rated employe 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 workday of the workweek of the individual employe:
>
> New Year's Day
> Washington's Birthday
> Decoration Day
> Fourth of July
> Labor Day
> Thanksgiving Day
> Christmas

by mail to fill it in the second place; and, even if the carrier had been obligated to summon one of them, which it would not have been in the third place, and, if one of them had been summoned, he would not have been obligated to report in the fourth place.

Perhaps the clearest evidence and explanation of the fact that the claimants had not made any such application and were not in fact available nor required to be available on December 27, 1960, is the record, given above, of the first dates on which those who did resume service within the following month, actually did resume service. They did not by any means resume service in seniority order, and neither was any claim ever made by or on behalf of any of them that he had been run around, by reason of not resuming service in seniority order. There was no restoration of the forces until June, and the only work available prior to that time was on such short temporary vacancies as they might care to apply for and accept.

As it is evident and undisputed that none of the claimants held a regular assignment on Monday or Tuesday, December 26 or 27, 1960, and that none of them worked on or received pay for Tuesday, December 27, 1960, and that none of them was in fact available for work on Tuesday, December 27, 1960, it follows that none of them meets the requirements of the rule for holiday pay for the Christmas holiday; and therefore the claims in the present case are without merit and should be denied.

For the reasons stated above, the carrier respectfully requests the board to dismiss or deny these claims in all respects.

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.

Claimants were furloughed effective at end of the day, December 25, 1960. Christmas Day was observed on December 26, 1960.

This holiday pay dispute involves the issue of "availability for service" under the requirements of the "Note" in Section 3, Article III, of the August 19, 1960 Agreement.

It is Carrier's contention that the Claimants herein were not "available for service" on the workday immediately following the holiday in question "Pursuant to the rules of the applicable agreement". Carrier sets forth Rule 10 and Rule 18(c) as the controlling "rules of the applicable agreement" as determining whether or not Claimants were "available for service" as required by said Section 3, Article III of the '60 Agreement.

Rule 10, Bulletining Positions, reads as follows:

"When new jobs are created or vacancies occur in the respective crafts the oldest employes in point of service shall, if sufficient ability is shown by trial (fifteen (15) days to be considered trial), be given preference in filling such new jobs or any vacancies that may be desirable to them. All permanent vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.

NOTE: Temporary vacancies of fifteen (15) days or more will be bulletined. Employes filling such temporary vacancies will be returned to their former positions at the expiration of temporary position."

Rule 18(c) provides:

"(c) In the restoration of forces, employes will be restored to service in accordance with their seniority if available within a reasonable length of time and shall be returned to their former position if possible. The local committee will be furnished with a list of employes to be restored to service. In no case shall fifteen (15) days be exceeded for return to service unless special arrangements are made with General Commtitee and Management."

Carrier argues that inasmuch as there was no force restoration until the following June, 1961, the only work available was on short temporary vacancies and therefore in order to be "available" for such temporary vacancies, Claimants were required to apply for and accept said temporary job vacancies. Carrier further contends that in view of Rule 18(c), Claimants cannot under any circumstances be considered "available for service" because Rule 18(c) gives them 15 days to return to service or 15 days to make themselves "available"; that further, the only other way Claimants could have returned to service was by assignment by bulletin to a temporary vacancy in accord with said "Rule 10", which could not have been accomplished until after the "bulletin" had been posted for 5 days, precluding Claimants from being "available for service".

With Carrier's contention that failure to comply with Rule 10 and Rule 18(c) precludes Claimants from satisfying the requirements of "availability" under the pertinent provisions of Section 3 of Article III of the '60 Agreement, we do not agree. As we pointed out in Award 5061, Section 3, Article III of the '60 Agreement is void of any reference that a certain rule or rules, in this instance Rule 10 and Rule 18(c), are the "rules of the applicable agreement" determining "availability". Where an employe has not laid off of his own accord, and there is no dispute here that employe has not laid off of his own accord, the test to determine "availability" as set forth in said "Note" in Section 3, Article III of the '60 Agreement, is whether or not Carrier did call Claimants for service, and not that Claimants were not required to respond to a call as Carrier contends.

Therefore, inasmuch as there is no dispute that Claimants were not called for service on the workday immediately following the holiday in question and that Claimants were "available for service" in conformity with the controlling

provisions of Section 3, Article III of '60 Agreement and having met all the other requirements of Article III of '60 Agreement for holiday pay, 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.

[See Award 5061 for Carrier Members' dissent.]

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