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. 3, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the carrier has unjustly dealt with Machinist Apprentice, R. E. Jones, when they denied him holiday pay for New Years' Day, January 1, 1962.

2. That accordingly, the carrier be ordered to additionally compensate the aforementioned Machinist Apprentice in the amount of eight (8) hours pay at the prevailing rate.

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 waived right of appearance at hearing thereon.

The issue herein is whether this furloughed Claimant was "available for service" within the intent and meaning of Section 3 (ii) and the "Note" therein of Article III of the '60 Agreement so as to qualify for the New Year's Day, January 1, 1962 holiday pay.

Carrier bases its argument against the claim on the grounds that Rule 18(d): "(d) Employes restored to service shall be allowed to work not less than three (3) days" and Paragraph 2 of Article IV of the August 21, 1954 Agreement: "Furloughed employes who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule" prevent Claimant from being "available" as determined by the "Note" under Section 3 of Article III of the August 19, 1960 Agreement.

This Division has previously in Award 5061, rejected the contention that Article IV of the August 21, 1954 Agreement is the controlling rule of the applicable agreement in determining "availability" as used in Section 3 (ii) of Article III of the '60 Agreement.

Further, Carrier's contention the Rule 18(d) which guarantees employes restored to service a minimum of three (3) days' work, prevents Claimant from being considered "available for service" is without merit, inasmuch as said Rule 18(d) is not the "controlling rule" of the applicable agreement referred to in the "Note" to Section 3, Article III of the '60 Agreement. As has been held previously by this Board, where the issue of "does not lay off of his own accord" is not involved, as in this claim, the test in determining "availability" under said Section 3, Article III of the '60 Agreement, is whether an employe, such as Claimant herein, was called for service by Carrier and did or did not respond to said call for service. There is no contention here that Carrier called Claimant for service.

Inasmuch as Claimant did not lay off of his own accord and did not fail to respond to a call for service from Carrier, therefore he was "available for service" within the intent and meaning of Section 3(ii) of Article III of the '60 Agreement, and therefore 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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