Award No. 5090
Docket No. 4999
2-PULL-EW-'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. 122, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Electrician G. Varney employed at the St. Louis Shops, St. Louis, Missouri, was unjustly denied holiday pay for Labor Day, September 7, 1964.

2. That accordingly, the Pullman Company be ordered to compensate Electrician Varney eight (8) hours pay for the holiday, Labor Day, September 7, 1964.

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.

In this holiday pay dispute for Labor Day, September 7, 1964, Carrier contends that Claimant herein was "not available for service" within the intent and meaning of Section 3(ii) and the "Note" thereunder of Article III of the '60 Agreement for the following reasons: (a) a furloughed employe, who does not register his desire and availability, where Article IV of this August 21, 1954 Agreement is applicable, and if said employe fails to register such a desire, he is in effect "laying off of his own accord"; and thus not "available for service" within the requirements of said Section 3(ii) and "Note" therein; (b) that the rules do not provide for furloughed electricians, such as Claimant herein, to be called for service for short term work of 10 days or less duration, and was thereby "not available for service".

This Division in Award 5061, rejected Carrier's contention that Article IV of the August 21, 1954 Agreement is the "controlling rule" of the applicable agreement referred to in "Note" to Section 3 of Article III of the '60 Agreement, and that Claimant did not have to first comply with said Article IV in order to be determined "available for service" so as to qualify for holiday pay. Also, failure to comply with said Article IV is not tantamount to Claimant "laying off of his own accord", as Carrier would have us believe it is. The fact that Claimant was furloughed by Carrier clearly shows that he did not lay off of his own accord.

Further, the fact that Claimant could not be called for service regarding work of less than 10 days duration does not make him not "available for service". As we have pointed out previously, the test in determining "availability" is not the fact that an employe does not have to respond to a call for service from Carrier, but whether Claimant was or was not called for service by Carrier. If he was called for service by Carrier and he failed to respond to such a call, Claimant would be in violation of the Agreement.

Therefore, inasmuch as Claimant herein did not fail to respond to a call for service from Carrier and did not lay off of his own accord, he met the terms of Section 3(ii) of Article III of the '60 Agreement, and his claim will 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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