**Award No. 5092**
**Docket No. 4166**
**2-UP-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.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)**

**UNION PACIFIC RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement J. J. Duffy, Groundman was improperly denied holiday pay by the Carrier for Christmas Day, December 26, 1960.

2. That the Carrier be ordered to pay Claimant one day's pay for the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Claimant J. J. Duffy, a groundman in the Omaha Shops since 1958, was assigned and working a regular position, Monday through Friday, up to and including December 16, 1960. He was then furloughed beginning December 17, 1960. As Christmas Day 1960 was on a Sunday, Monday December 26, 1960, was the day observed as the holiday. Claim was made for holiday pay for such date. Carrier denied this claim stating claimant could not be considered as "Available".

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: Article III, Section 3 of the August 19, 1960, agreement reads as follows in pertinent part:

"Section 3. A regularly assigned employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employe is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employe's workweek, the first workday following his rest day shall be considered the workday

"In the restoration of forces, senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former positions if possible, regular hours to be reestablished prior to any additional increase in force."

Having failed to so register, Claimant Duffy was not "ready, willing, and able" to work.

To successfully argue that Claimant Duffy in this situation is entitled to holiday pay, the organization must show that the July 19, 1960 agreement intended to give holiday pay to furloughed employes although they were not in fact available in the sense of being "ready, willing, and able" for service. No doubt the organization will advance much argument concerning the note following item (ii). In spite of all that may be said, its language and history demonstrate that it could not have been intended to accord holiday pay for those not actually available for service.

The note contains two requirements which must be met before an employe can be considered "available" and qualified for holiday pay: he must not lay off of his own accord, and second, he must not fail to respond to a call for service. It is submitted that a furloughed employe who does not register his desire to perform work during the period of his furlough has in fact laid off of his own accord, at least on those days where he might have been called but for his failure. Such an employe has told the carrier that even if it has work for him (other than in a general recall), the carrier should not call him because he is not willing to perform such work. Where the employe fails to record his desire for such work, he has in fact failed to respond to a call which, had there been such registration, would have been made in the event of the availability of work.

Since Claimant Duffy, by failing to notify the carrier, could not have been called, other than in a general recall, he was in fact unavailable for service and, thus, would not qualify for holiday pay.

The claim for holiday pay for the Christmas holiday on December 26, 1960, during which period claimant was furloughed, performed no compensated service, and was not available for such service, is totally unsupported either by the provisions of Article III of the agreement of August 19, 1960, under which the claim was made, or under the provisions of any agreement between the parties and, accordingly, should be denied.

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.

This dispute involves the claim for holiday pay for Christmas Day, celebrated on December 26, 1960.

The Carrier in its original submission claimed that claimant wasn't "available for service" on the workday preceding and the workday following the holiday as required by Article III, Section 3 of '60 Agreement, because of his failure to comply with the pertinent provisions of Article IV of the August 21, 1954 Agreement. This contention was rejected by this Division in Award 5061.

Carrier further argues in its second submission that Carrier and the Organization entered into a special Agreement dated August 26, 1960 governing the use of furloughed employes for the filling of temporary vacancies.

Examination of said Agreement of Understanding discloses that it refers to the August 21, 1954 Agreement and states:

> "In accordance with paragraph 3 of Carriers' Proposal No. 6, the call-in of furloughed employes to perform relief work will be done in seniority order of those furloughed employes who have notified the supervisor in charge and local chairman in writing of their desire to be used for such work. A senior furloughed employe who makes written notification of his desire to perform relief work will not be permitted to displace a junior furloughed employe who is then filling a relief position, but the senior furloughed employe will be given preference to the first vacancy for a relief position that develops after his written notification is received."

Carrier's position is that in entering into this special Agreement the Organization fully recognizes that only furloughed employes giving the necessary written notice of availability may be called for relief work, and therefore failure of a furloughed employe to so supply said notice of availability to Carrier precludes him from holiday pay.

We do not agree with this contention of Carrier that the special Agreement of August 26, 1960 applies to the determination of Claimant's "availability" in this instance as set forth in the "Note" to Section 3, Article III of the '60 Agreement. At most, said Agreement of Understanding amounts to an attempt to clarify any existing misunderstandings that may occur between Carrier and the Organization in regard to the use of furloughed employes for relief work. Therefore, we must reject this argument, and in view of the fact that Claimant met the necessary requirements of said Section 3, Article III of the '60 Agreement, 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.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.