Award No. 5095
Docket No. 4168
2-MP-MA-'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. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 – That under the current agreement Machinists Grady P. Graham and Arthur P. Evans and Machinist Helpers Walter A. Siebels and Thomas E. Graham were improperly denied compensation by Missouri Pacific Railroad Company for the holiday January 2, 1961, DeSoto, Missouri.

2 – That accordingly, the Missouri Pacific Railroad Company be ordered to compensate these employes each in the amount of eight (8) hours pay at the straight time rate for the holiday, Monday, January 2, 1961.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, violated the August 21, 1954 agreement when the claimants, listed below, were denied holiday pay for Monday, January 2, 1961:

Machinists: Grady P. Graham and Arthur P. Evans.

Machinist Helpers: Walter A. Siebels and Thomas E. Graham.

The above named claimants were regularly assigned at DeSoto, Missouri, with a work week Monday through Friday, with rest days of Saturday and Sunday.

The claimants were furloughed at the close of shift, Friday, December 30, 1960.

This matter has been handled up to and including the highest designated officer of the carrier who has refused to adjust it.

The agreement effective June 1, 1960, as subsequently amended, is controlling.

System Federation No. 2 and the Missouri Pacific Railroad Company, heard before the board with Referee Anrod, on February 26, 1962, it is contended that the carrier violated the same agreement when a furloughed coach cleaner at Brownsville, Texas, was used in place of the regularly assigned employe on a seven-day position to relieve said regular assigned employe on his two rest days; it being contended that a furloughed employe is not available and cannot be used to fill two tag-end rest days. Although the claim seems to have been primarily premised upon an alleged violation of the general provisions of the National Forty-Hour Work Week Agreement with respect to the establishment of a work week of 40 hours, consisting of five days with two consecutive rest days in each seven, an examination of the docket in that case will also reveal the same contention as here, that is, that the carrier is prohibited from using furloughed employes to perform extra work; it being a further contention in that case that tag-end rest day relief requirement constitutes extra work and is therefore prohibited by Article IV of the National Agreement of August 21, 1954, which was in effect on that part of the property during claim period in February, 1960.

Your board should also be again reminded that although the shop craft organizations on this property now reluctantly concede that the carrier may OFFER to furloughed employes the opportunity to work in the place of other employes during their absence, they have never conceded and the carrier does not contend that carrier has the right to require or compel furloughed employes to respond to a call for service pursuant to the rules of the applicable agreements in effect on this property to work in the place of other employes absent during the work days of their work week or on their rest days, or to perform extra work.

The only way that furloughed employes can be required or compelled to perform the work of their craft is to increase or restore the forces strictly in accordance with Rule 21 (c) of the shop crafts' agreement which, as your board will note, accords to the senior laid-off men 15 days within which to report for service in response to notice of restoration or increase in the regular work force.

In view of the foregoing, there is no basis for these claims and they must therefore 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 holiday pay for January 2, 1967. Claimants herein were furloughed effective at end of workday, December 30, 1960.

Carrier contends that the furloughed Claimants herein could not be required to respond to a call for service because of Rule 21(c) of the Shop Crafts' Agreement and therefore were not "available for service" as defined

in the "Note" following Section 3(ii) in Article III of the Agreement of August 19, 1960, on the workday following the holiday in question.

Rule 21(c) provides as follows:

"RULE 21.

REDUCION IN FORCES

(c) In the restoration of forces senior laid-off men will be given preference in returning to service, if available within fifteen (15) days, and shall be returned to their former positions if possible. In individual cases time limit may be extended by mutual agreement between local committees and local officials. To receive consideration under this rule men affected must leave their names and addresses and also change of addresses with the local supervisor and local committee."

We do not concur with Carrier's said contention. The test of determining "availability" as referred to in said "Note" and where, as here, Claimants did not lay off of their own accord, is not that Claimants cannot be required to respond to a call for service, but whether Claimants responded to a call for service from Carrier. Therefore, Rule 21(c) of the Shop Crafts' Agreement is not the "controlling rule" in determining whether or not the furloughed Claimants herein are entitled to the claimed holiday pay. In view of the fact that Carrier failed to call Claimants for service in the instant case, Claimants therefore cannot be thus considered as being not "available for service".

Carrier further argues that by reason of the "Memorandum of Agreement", dated June 20, 1949, between the parties hereto, which Carrier asserts prohibits it from using employes not assigned to five days of work per week to increase the regular force, or as Carrier puts it: "is another way of saying that such employes may not be used to perform extra work", made Claimants not "available for service". Memorandum of Agreement is not the "controlling rule" of the applicable rules of the Agreement for determining "availability for service" under provisions of Section 3, Article III, of the 1960 Agreement, and inasmuch as Claimants did not lay off of their own accord and Carrier did not call Claimants for service, claimants met the requirements of said Section 3(ii) of Article III of the '60 Agreement, and 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.

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