Award No. 5102
Docket No. 4205
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 the carrier improperly denied axle turner, T. W. Hicks, pay in the amount of eight hours at pro rata rate for January 2, 1961, New Year's Day, at North Little Rock, Arkansas.

2. That accordingly the carrier be ordered to additionally compensate Axle Turner Hicks in the amount of eight hours' pay at pro rata rate for New Year's Day, January 2, 1961.

EMPLOYES' STATEMENT OF FACTS: Mr. T. W. Hicks, hereinafter called the claimant, was employed by the Missouri Pacific Railroad Co., hereinafter called the carrier, as an axle turner at carrier's shops in North Little Rock, Arkansas.

The claimant was regularly assigned, with a work week of Monday through Friday.

On December 19, 1960, the claimant began his assigned vacation, and was paid for vacation from December 19, 1960 through December 30, 1960 (ten days) which he had earned by his service with the carrier in prior years.

The carrier reduced its forces on December 21, 1960, and now alleges that claimant did not have compensated service on the last day of his assignment preceding the holiday, which was Friday, December 30, 1960. The claimant returned to service on January 3, 1961, which was the first day of his assignment following the holiday.

New Year's Day, 1961, was a holiday for which the claimant was entitled to receive eight hours' holiday pay. The carrier failed to make the payment and subsequently refused to allow the claim, as evidenced by Chief Mechanical Officer L. R. Christy's letter, and on appeal was denied by Chief Personnel Officer B. W. Smith, as shown in his letter.

preceding or following the holiday or both. Claimant was not available for service on the work day preceding the holiday and would not be entitled to holiday pay for that additional reason. We shall explain the reasons for this position briefly since the reason was given as an additional argument for declining the claim on the property and to explain how this claim compares with the other claims being progressed to your Board.

Section 3 of Article II of the agreement of August 21, 1954, as amended by Article III of the agreement of August 19, 1960, contains an additional qualifying requirement. The agreement provides that other than regularly assigned employes

> "shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:
>
> (i) Compensation for service paid by the carrier is credited; or
>
> (ii) Such employe is available for service.
>
> NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employe is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

We have seen from the above that claimant did not have compensation for service credited to the work day preceding the holiday because he was furloughed. Therefore, he did not meet the requirements of paragraph (i) above.

Claimant did not meet the requirements of paragraph (ii) above because he was not available within the meaning of that word as defined in the Note quoted above. This is true because, as a furloughed employe on the work day preceding the holiday, he could not be required to respond to a call pursuant to the provisions of the shop craft agreement applicable to him. This reason for declining the claim is more fully discussed in other dockets before this board if the members wish to pursue the question further. This claim, however, must be denied for the first reason given above, that is, claimant did not have a sufficient number of days of compensation for service credited to the 30 calendar days immediately preceding the holiday.

This claim is entirely lacking in merit and is not supported by the rules relied on by the employes and must 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.

The facts in this case, which are not in dispute, are that claimant was on vacation from December 19 to December 30, 1960. While on vacation, Carrier furloughed claimant, beginning December 22, 1960. Claim is made for the holiday pay for New Year's Day, which was celebrated on January 2, 1961.

Carrier asserts that when claimant was furloughed while on his vacation, his status changed from absent on vacation to furloughed; that claimant is not entitled to holiday pay in accord with Rule 3(b) of the Shop Craft Agreement because he was not required to perform any work on January 2, 1961; that claimant did not have compensation for service paid him by Carrier credited to 11 or more of 30 calendar days immediately preceding the holidays; that claimant was not available for service on the workday preceding the holiday, in accord with the requirements of the 2nd paragraph of Section 3 of Article III of the August 19, 1960 Agreement.

First, we look to see if claimant met the requirement of having compensation for service paid him by the Carrier credited to 11 or more of the 30 calendar days immediately preceding the holiday in question.

Carrier argues that inasmuch as claimant actually "worked" only 10 days in December, 1960, he failed to meet the 11 or more compensated service days within the 30 calendar days immediately preceding the holiday, contending that pay received by an employe while on vacation is not "compensation for service" since the employe is not performing service for the Carrier while on vacation, and that payment in lieu of vacation to a furloughed employe is not "compensation for service", inasmuch as the furloughed employe is also not performing service for the Carrier.

This Board has previously held that vacation pay is "compensation for services" as used in Article III, Section 1 of the August 19, 1960 Agreement. See Third Division Awards, Nos. 14674 and 14816. Thus, Carrier's contention that claimant did not meet the 11 or more compensated service days within the 30 calendar days immediately preceding the holiday in question is without merit and must be rejected.

Even though claimant was not required to work on January 2, 1961, the day on which the holiday was celebrated, we do not concur in Carrier's contention that Rule 3(b) is the controlling rule of the applicable agreement herein to determine this holiday pay dispute. The controlling Agreement herein is Article III, Section 3 of the '60 Agreement and the pertinent provisions of said Paragraph 2 of said Section 3 of August 19, 1960 Agreement read as follows:

> "shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:
>
> (i) Compensation for service paid by the carrier is credited; or
>
> (ii) Such employe is available for service.
>
> NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employe is available unless he lays off of his own accord or does not

respond to a call, pursuant to the rules of the applicable agreement, for service."

We further disagree with Carrier's assertion that Claimant was not available for service in accord with Section 3 (ii) and the "Note" therein, of Article III of the '60 Agreement. Without specifying the rule, Carrier argues that claimant was not "available" because he could not be required to respond to a call pursuant to the provisions of the Shop Craft Agreement applicable to him. This argument is untenable for the reason that the test to determine "available for service" is not whether an employe, such as claimant here, cannot be required to respond to a call for service from Carrier, but whether or not Carrier called the employe for service and the employe did or did not respond to such a call for service from Carrier.

Therefore, inasmuch as Claimant did not lay off of his own accord and did not fail to respond to a call for service from Carrier, and having met all the other requirements of Sections 1 and 3 of Article III of the '60 Agreement, this 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.

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