Award No. 5105
Docket No. 4227
2-IC-FO-'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. 99, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen & Oilers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, particularly Article III of the August 19, 1960 Agreement the Carrier improperly denied Laborers Orie Pullen, Jasper Hartfield and H. A. Short holiday pay for New Year's Day, January 2, 1961.

2. That accordingly, the Carrier be ordered to compensate each of the aforenamed employes eight (8) hours at the applicable straight time rate for New Year's Day, January 2, 1961.

EMPLOYES' STATEMENT OF FACTS: Laborers Orie Pullen, Jasper Hartfield and H. A. Short, hereinafter referred to as claimants are employed by the Illinois Central Railroad, hereinafter referred to as carrier, as Paducah, Kentucky with seniority dates of March 17, 1959, March 6, 1960 and October 24, 1960 respectively.

Under date of December 21, 1961 notice was posted reducing the force of laborers, including Claimants, effective at the close of scheduled shop hours on Friday, December 30, 1960.

Prior to being furloughed claimants were regularly assigned to positions working 3:40 P. M. to 12:00 Midnight, Monday through Friday, rest days Saturday and Sunday.

Monday, January 2, 1961 was the day officially observed as New Year's Day. The claimants worked on Friday, December 30, 1960 which was the work day immediately preceding the holiday in question. Claimants were available for service on Tuesday, January 3, 1961 which was the work day following the holiday but were not called.

Claimants did not receive eight (8) hours pro rata rate for the holiday, January 2, 1961.

Article IV grants carriers, who elected to adopt the rule, the right to use furloughed shop employes to perform relief and extra work provided such employes indicated a willingness to perform such work per requirements of Section 2 thereof. This carrier, however, **elected not to adopt Article IV** and instead preserved its then existing rules and practices with respect to furloughed shop employes. The general chairman of the Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers was accordingly notified of the carrier's election by letter from manager of personnel, dated September 24, 1954. **The restrictions against the use of furloughed shop employes for relief and extra work, so far as this carrier is concerned, still stand.**

The note to Section 3 (ii) of the August 19, 1960 agreement provides, we repeat, that an employe is available for service unless he lays off or fails to respond to a call in accordance with the rules of the agreement. Furloughed shop laborers are not subject to calls, cannot be required to respond even if called, and have no rule or reason to lay off. They simply are not in active service as Section 3 (ii) contemplates, and are not, at any rate, available for service. They are here attempting to have their cake and eat it — they can not be required to respond to call except on 10 day notice but, at the same time, contend that they are available for service at any time. They may be available **in fact** — we can only speculate — **but they are not available under the terms of the agreement and that is the test to be applied.** The employes are, in effect, asking the board to amend the rules to the extent necessary to make furloughed shop laborers, who are not in active service, "available for service" for the purpose of qualifying for holiday pay. The board does not, of course, have the authority to amend or rewrite the rules.

The carrier, in summary, submits that it has shown that the claim for holiday pay is without merit because, first, furloughed shop laborers are not in active service and are not within the qualifying provisions applying to other than regularly assigned employes, and, secondly, are not, under the facts here, available for service within the meaning of Section 3 (ii), Article III, of the August 19, 1960 National Agreement.

There has been no violation of the agreement and the claim 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 waived right of appearance at hearing thereon.

This claim for holiday pay for New Year's Day, celebrated on January 2, 1961, involves the issue of "availability" of these furloughed Claimants on the workday immediately following said holiday.

Carrier points out that the August 19, 1960 Agreement effected two basic changes in the holiday pay rules, namely, a liberalization of the qualifying requirements for holiday pay and the extension of holiday pay to "other than regularly assigned" employes. Carrier argues that the provisions of the '60 Agreement, in regard to "other than regularly assigned" employes, apply

only to employes who are in active service but are unassigned before and after a holiday, and does not apply to regularly assigned employes, such as the Claimant who are furloughed before a holiday and are not in active service after the furlough or holiday.

With this distinction, we do not agree. The provisions of '60 Agreement applicable to "other than regularly assigned" employes do not, as Carrier will have us believe, prohibit an employe from combining regularly assigned service before a holiday with a furlough status after the holiday.

Further, Carrier contends, because of Rule 29, which it states is the only rule in the Agreement pertaining to the procedure required to be followed in restoring furloughed employes to service, Claimants were not therefore required to be "available for service" within the intent and meaning of Section 3 (ii) and the "Note" therein of Article III of the '60 Agreement.

Rule 29 — the only rule in the agreement relating to the procedure to be followed in restoring furloughed employes to service — reads:

> "Employes laid off account force reduction desiring to retain their seniority rights must within fifteen (15) days file their names and addresses in writing with their employing officer and renew same each ninety (90) days. Also notify such officer in writing of any change in address. When forces are increased, the employe will be notified and must return to service within ten (10) days. Failure to comply with these provisions, unless prevented by sickness of the employe, will result in loss of seniority. A letter or telegram addressed to employe at the last address filed will constitute proper notice. Employes, excepting those in service in excess of fifteen (15) years, laid off in force reduction in excess of one (1) year, will lose their seniority rights."

Carrier argues that because Claimants cannot be required to respond to a call for service from Carrier except on "10 day notice", and by virtue of said Rule 29, Claimants therefore were not "available for service". As this Division has pointed out previously in the interpretation of "availability" in Section 3, Article III of the '60 Agreement, the test to determine "available for service", where, as here, the question of laying off of his own accord is not at issue, is not whether Claimants were not required to respond to a call for service from Carrier, but whether Carrier called Claimants for service and they did or did not respond to such a call for service. Inasmuch as Claimants did not lay off of their own accord (they were furloughed at the direction of Carrier) and were "available for service" within the intent and meaning of Section 3(ii) of 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.