Award No. 5122
Docket No. 4335
2-GN-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. 101, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen & Oilers)

KING STREET PASSENGER STATION
(Great Northern Railway Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Stationary Engineers N. O. McElvain, Rex Beach, Raymond Strezelecki and Butler Genelaw were improperly denied eight hours holiday pay for Memorial Day, May 30, 1961.

2. That accordingly the Carrier be ordered to pay each of the aforementioned Claimants eight hours holiday pay for the above mentioned date.

EMPLOYES' STATEMENT OF FACTS: N. O. McElvain, Rex Beach, Raymond Strezelecki and Butler Gelenaw, hereinafter referred to as claimants, are employed as Stationary Engineers in the King Street Station Power Plant, Seattle, Washington. King Street Station is a terminal facility in the City of Seattle, jointly owned by the Great Northern and Northern Pacific Railway Companies, and will hereinafter be referred to as carrier.

Claimants as of May 22, 1961, were regularly assigned as stationary engineers in carrier's power plant. Claimants were furloughed in a force reduction account closing of the King Street Station Power Plant as follows:

Claimant Strezelecki	– effective May 23, 1961
Claimant Gelenaw	– effective May 24, 1961
Claimants McElvain and Beach	– effective May 26, 1961

Memorial Day, a holiday under the terms of the controlling agreement fell on Tuesday, May 30, 1961, and carrier has declined to compensate claimants therefor in accordance with the provisions of Article III of the August 19, 1960 agreement.

compensation for service paid by the carrier on the workday preceding and the workday following the holiday, and were not "available" on those days "pursuant to the rules of the applicable agreement."

2. The allegations of the claimants that they were in fact ready, willing and able to perform service on the workday preceding and the workday following the holiday are of no probative value as evidence; are irrelevant because an employe must be "available" for service pursuant to rules of some agreement which actually provides for such availability for service and obligates the employe to respond; and because the claimants did not indicate any willingness or readiness to perform service under Rule 6(d) or to transfer to another point under Rule 9.

3. Neither the organizations which demanded expansion of the August 21, 1954 holiday provision, nor Emergency Board No. 130 which considered those demands, indicated any intent to provide bonus holiday pay for employes who were furloughed prior to a holiday for an indefinite and extensive period, for reasons other than to avoid holiday pay.

4. Emergency Board No. 130 recognized that the parties had not abandoned the doctrine that holiday pay is for the purpose of maintaining take-home pay, and, therefore, granting holiday pay to the claimants would violate that doctrine.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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.

The procedural issue involved in this holiday pay claim dispute is whether or not Article V (a) of the '54 Agreement was complied with by Petitioners by filing the claim herein within the 60-day time limit rule of said Article V.

If the claim is not presented in writing to the Carrier's authorized officer within 60 days from the date of the occurrence on which the claim is based, in this instance the Memorial Day holiday of May 30, 1961, then this Division is without jurisdiction and the claim must be dismissed.

The factual situation concerning said procedural question is that by letter, dated July 29, 1961, this claim was initially made on behalf of claimants by General Chairman Carlson. The Organization contends that the claim was filed in writing by virtue of said letter, dated July 29, 1961, the 60th day from the date of the occurrence, May 30, 1961.

The test to determine whether or not this claim was "presented" to Carrier within the 60-day time limit period is the date within said 60 day

time limit period that Carrier actually "receives" the claim. The Carrier herein denies receiving the letter on July 29, 1961, the last day of the 60-day time limit period. Therefore, the requirement of the claim being "presented" or in this instance, since it was by letter, being "received" by Carrier within said 60-day time-limit period, not having been proved by the Petitioners herein, on whom the burden rests to so prove compliance with said Article V, this claim must be dismissed.

As to the Organization's contention that the Carrier violated said Article V by failure of Superintendent Hoag to make any objection as to the violation of the 60-day time limit provision, thus making subsequent objections of Carrier untimely, this contention is moot in this instance. The basic and controlling issue is whether or not the claim was or was not timely filed. Inasmuch as it was not, this claim must be dismissed for failure to comply with Article V 1(a) of the '54 Agreement.

AWARD

Claim dismissed.

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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