



Award No. 5125

Docket No. 4466

2-DM&IR-CM-'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. 71, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement particularly Article III of the August 19, 1960 Agreement, the Carrier improperly denied the following named employes of the Carmen's craft, holiday pay for Thanksgiving Day, November 23, 1961:

Carold Flake	Gerald Smith
Harold Murphy	Eino Karkinen
Raymond Rosen	David Bergerson
Carold Puent	Norman Johnson
Carl Martinson	Louis Ravniker
William Ranta	E. J. Wiita

2. That accordingly the Carrier be ordered to compensate each of the aforementioned employes eight (8) hours each at the applicable pro-rata rate for Thanksgiving Day, November 23, 1961.

EMPLOYEES' STATEMENT OF FACTS: The employes named above in part 1 "Claim of Employees", hereinafter referred to as the claimants, are employed by the Duluth, Missabe & Iron Range Railway Co., hereinafter referred to as the carrier, in the class or craft of carmen on the carrier's Iron Range Division at the locations specified.

Under date of November 17, 1961, carrier posted notices reducing its force of carmen and furloughing claimants on the date specified in the notices. As will be noted, all of claimants were furloughed effective November 22, 1961 with the exception that two (2) were furloughed on November 20, 1961 and one (1) was furloughed on November 21, 1961.

All of the claimants had been working regularly on positions having Thursday, November 23, 1961 as a regularly assigned work day of their respective work weeks.

The carrier respectfully submits that the claim of the employees in this docket 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 employees 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.

Carrier's contention in this holiday dispute for Thanksgiving Day, November 23, 1961, is that Claimants were not "available for service" because they were not able to sign up for extra work because the parties herein did not adopt Article IV of the August 21, 1954 Agreement; that the Claimants did not sign up for relief work in accord with Rule 28 (b); that an employe has fifteen days in which to respond to a call for service.

The controlling provision of Section 3(ii), Article III of '60 Agreement and the "Note" therein, defines "availability" for service. We do not agree with Carrier's contention that because Claimants were not able to sign up for relief work, or did not sign up for relief work, or the fact that they had 15 days to respond to a call for service, that therefore Claimants were precluded from being determined "available for service" in accord with Section 3(ii) and the "Note" therein of Article III of '60 Agreement.

This Board has previously rejected as the test for "availability" the requirement that an employe must respond to a call for service from Carrier, and we have held that the test for so determining "availability" is whether or not Claimants were called for service by Carrier, and Claimants did or did not respond to such a call. If they were called for service by Carrier and they failed to respond to such a call, they would be in violation of the Agreement. Claimants could not be found guilty of failing to respond to a call for service if they weren't called by Carrier. However, in the instant claim, Carrier didn't call Claimants and Claimants did not lay off of their own accord, and therefore Claimants were available for service on the workday following the holiday, in accord with Section 3(ii) of Article III of '60 Agreement, and the 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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