

Award No. 5126
Docket No. 4481
2-GN-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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the Carrier failed to compensate Carman Helper Dan F. Anderson Holiday Pay for New Year's Day, January 1, 1962, and

2. That accordingly, the Carrier be ordered to compensate Carman Helper Dan Anderson in the amount of eight hours, at the straight time rate of pay, because of said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper Dan F. Anderson, hereinafter referred to as the claimant, is employed by the Great Northern Railway Company, hereinafter referred to as the carrier, at its St. Cloud Car Shops, St. Cloud, Minnesota, Monday through Friday, with assigned hours of duty from 8:00 A. M. to 4:30 P. M. — thirty minutes for lunch.

The claimant was a regularly assigned employee, had compensation credited to the work day preceding the holiday, December 29, 1961.

On January 2, 1962, the claimant reported for work. Approximately 45 minutes after reporting for work the claimant became ill and checked out for the remainder of that day. A time slip was made out for the 45 minutes worked and the claimant was compensated for same.

Upon returning to work the following day the claimant's time slip for holiday pay was returned to him unsigned.

Claim was initiated by the local chairman on January 4, 1962.

Claim was denied by the General Foreman on January 4, 1962 with the reasoning:

**THE CLAIM OF THE ORGANIZATION, THEREFORE, IS
WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. Insofar as the issue in this case is concerned, the qualifying requirements of the first paragraph of section 3 of the August 19, 1960 agreement are the same as those contained in the first paragraph of section 3 of article II of the August 21, 1954 agreement.

2. The August 21, 1954 agreement reflected the recommendations of presidential emergency board No. 106 that regularly assigned employees be required to work their assignments on the workdays immediately preceding and following the holidays in order to qualify for holiday pay.

3. The organizations' counsel admitted before presidential emergency board No. 130 that regularly assigned employees were required to work their assignments on the workdays immediately preceding and following the holidays for the purpose of preventing absenteeism, and did not propose to change that requirement except where absence was for "good cause."

4. Presidential Emergency Board No. 130 recommended that regularly assigned employees who are assigned to work on the work days immediately preceding and following the holidays continue to be "ready, willing and able to work" in order to qualify for holiday pay.

5. The claimant was not ready, willing and able to work his assignment on the workday immediately following New Year's Day 1962.

For the foregoing reasons, the carrier respectfully requests that the claim of the employees be denied.

All of the evidence and data contained herein has been presented to the duly authorized representative of the employees.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 facts herein are that claimant worked the workday immediately preceding the January 1, 1962 holiday. After being on the job for a period of 45 minutes on January 2, 1962, the day immediately following said holiday, claimant laid off the remainder of said day on account of illness.

The question involved herein is whether or not claimant satisfied the requirement of Section 3 of Article III of August 19, 1960 Agreement, governing the parties to this dispute, when he worked 45 minutes of the workday immediately after the January 1, 1962 holiday.

The pertinent provision of Section 3 of Article III of the August 19, 1960 Agreement, provides as follows: 3

"A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday." 4

Carrier's argument is that a regularly assigned employee is compelled to work on the workday and not qualify for holiday pay by putting in a token appearance at work on the workday immediately following the holiday, and that claimant was therefore not ready, willing and able to work his assignment on January 2, 1962, the workday immediately following the holiday in question. 5

A close perusal of said Section 3 of Article III of August 19, 1960 Agreement shows that in order for an employee to qualify for holiday pay under the provisions of this Section, he must have compensation paid him by Carrier credited to the workdays immediately preceding and following such holiday. (This Section does not require an employee to have compensation for a minimum number of hours worked on the day preceding or following a holiday, but merely says that he must have "compensation paid him by Carrier credited" to the workdays immediately preceding and following the holiday and thus Carrier's contention is without merit.) 6

(Therefore, in view of the fact that claimant received compensation paid him by carrier credited to the workdays immediately preceding and following the holiday in question, and qualifies in all other respects for the holiday pay, this claim will be sustained.) 7

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.