Award No. 5128
Docket No. 4838
2-DT&I-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. 57, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier improperly denied Carmen H. Herndon and W. E. Grube compensation for Christmas Day, December 25, 1963.

2. That accordingly, the Carrier be ordered to compensate Carmen H. Herndon and W. E. Grube in the amount of (8) hours at the pro rata hourly rate for the aforenamed holiday.

EMPLOYES' STATEMENT OF FACTS: Carmen H. Herndon and W. E. Grube, hereinafter referred to as the claimants, are regularly employed by the Detroit, Toledo & Ironton Railroad Company, hereinafter referred to as the carrier, at Rouge Yard, Dearborn, Michigan.

Claimants were regularly assigned to a work week of Monday through Friday, with Saturday and Sundays as rest days, first shift, from 8 A. M. to 4 P. M. at Rouge Yard, Dearborn, Michigan.

On Tuesday, December 24, 1963, claimants reported for work at 8:00 A. M. and worked a full eight (8) hour shift. On Thursday, December 26, 1963, claimants reported at 8:00 A. M. Claimant Grube worked one and one-half (1½) hours and Claimant Herndon worked one-half (½) hour. Accordingly, claimants had compensation paid them by the carrier credited to the work days immediately preceding and following the holiday, Christmas Day, December 25, 1963, which fell on Wednesday, a work day of the claimants' work week.

Carrier has refused to compensate the claimants for the holiday, because they did not work a full eight (8) hour shift on Thursday, December 26, 1963.

cused. In fact it is quite apparent they only reported for work in the first place anticipating they would qualify for the 8-hour holiday pay for Christmas Day.

It is the carrier's contention that the words "compensation paid him by the carrier" was intended to mean the full amount of work time required by the carrier on the qualifying days — not merely some token amount. To carry it to a ridiculous conclusion, a man might work only 5 minutes and then be considered qualifying for holiday pay.

In article III – holidays – quoted above, "available" is defined to mean "that an employe is available unless he lays off of his own accord". The claimants by walking off the job after working only a small portion of their 8-hour tour of duty were laying off of their own accord. They were not available for the full work-day required by the carrier. It is therefore apparent they have disqualified themselves from receiving the holiday pay.

Carrier affirmatively states that all data in connection with this mattter has been presented to representatives of the organization.

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.

Claimants (two), regularly assigned Carmen, Claimant Grube worked 1½ hours and Claimant Herndon ½ hour on December 26, 1963, the workday immediately following the December 25, 1963 Christmas holiday. Both worked the full workday preceding the holiday in question.

The Carrier contends that an employe is required to work the full 8-hour workday, unless excused, in order to qualify for holiday pay under Section 3 of Article III of the August 19, 1960 Agreement: ". . . if compensation paid him by the Carrier is credited to the workdays immediately preceding and following such holiday . . .".

With this contention that claimants were required to work the full 8-hour shift on the workday immediately following the holiday in question, we cannot agree. As we pointed out in Award 5126, there is no minimum hours worked requirement or minimum time worked requirement in said controlling Article to this dispute. Therefore, claimants met the requirement of said Section 3 of said Agreement by having compensation paid them by the Carrier credited to the workdays immediately preceding and following the holiday in question.

Carrier further asserts that when claimants walked off the job, after working ½ hour and 1½ hours, respectfully, they laid off of their own accord

and were not available in conformity with Paragraph 2 of Section 2 of said Article III of the August 19, 1960 Agreement.

Said Paragraph 2, Section 3 of said Agreement, provides as follows:

"All others for whom holiday pay is provided in Section 1 hereof 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."

It is obvious that the above quoted paragraph applies to "other than regularly assigned employes," and inasmuch as there is no dispute in the record that claimants herein were "regularly assigned" employes, this paragraph of the Agreement does not apply, and Carrier's contention is thus without merit.

Claimants, having met the requirements of the controlling Agreement in regard to holiday pay, are therefore entitled to said holiday pay.

AWARD

Claims 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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