Award No. 5130
Docket No. 4607
2-GB&W-MA-'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. 94, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

GREEN BAY AND WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly denied Machinists E. N. Schuette, M. C. Stinson, A. N. Arcand, G. Koske and Machinist Apprentice J. L. Bartels eight (8) hours at the pro rata rate of pay for New Year's Day, January 1, 1963.

2. That accordingly, the Carrier be ordered to compensate the aforenamed employes eight (8) hours each at the pro rata rate for the holiday, January 1, 1963.

EMPLOYES' STATEMENT OF FACTS: Machinists E. N. Schuette, M. C. Stinson, A. N. Arcand, G. Koske and Machinist Apprentice J. L. Bartels, hereinafter referred to as the claimants, are employed by the Green Bay and Western Railroad Company, hereinafter referred to as the Carrier, at Green Bay, Wisconsin.

Prior to being furloughed effective at the close of the work day December 14, 1962, claimants held regular assignments with a work week including Tuesday as a work day of their work week.

Effective at the close of the work day December 14, 1962, carrier closed its locomotive department at Green Bay down and furloughed the claimants through January 6, 1963. On January 7, 1963 the shop was reopened and claimants returned to their regular assignments held prior to the close down.

Christmas Day, December 25, 1962 and New Year's Day, January 1, 1963, both legally recognized holidays, fell on Tuesday, a work day of the claimants' regular assignment.

Carrier compensated the claimants holiday pay for Christmas Day, December 25, 1962, but declined to compensate claimants holiday pay for New Year's Day, January 1, 1963.

employe would qualify for the holiday pay by either having compensation credited to the days immediately preceding and following the holiday, or in the event the assignment was blanked or was briefly furloughed to be available for service. To be available for service means that he is not to lay off of his own accord. This provision eliminated the practice on some carriers of blanking or furloughing the employes on the days immediately preceding and/or following the holiday to evade the payment of the holiday pay. However, being furloughed for a period of three weeks does not fall into the category of being briefly furloughed. Briefly furloughed is interpreted to mean of short duration, such as a day or two. The 1960 agreement also provided for holiday pay for the employe who was other than regularly assigned which is the question we are presently confronted with. Be that as it may, claimants did not qualify because they did not fulfill the requirement of having 11 compensated days in the period of 30 calendar days prior to the holiday.

The locomotive department was shut down due to an insufficient amount of work to keep all the employes gainfully employed. No thought or action was directed at depriving the employes of holiday pay for January 1st. If that were the case, it would have been an easy matter to have closed down one week earlier and eliminate the December 25th holiday also. As a matter of fact, all the employes who were furloughed on December 14th, 1962, including claimants in the present dispute, qualified for and were paid for the December 25th, 1962 holiday under paragraph 2 of section 1, article III on account of having 11 or more compensated days in the period of 30 calendar days prior to the holiday. We might add again, that seven of the twelve employes who were furloughed on December 15th, 1962 did qualify for the holiday pay on January 1, 1963 by working a sufficient number of days in their furlough period to make up the 11 compensated days required.

In conclusion we state again, and we have definite proof in support thereof, that all of the claimants in the instant dispute registered for unemployment compensation during their furlough period and all of the claimants claimed and were paid January 1st, 1963 as a day of unemployment. Just how can they claim January 1st, 1963 as a day of unemployment and at the same time register a claim for holiday pay for a day for which they have already been compensated?

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 were given due notice of hearing thereon.

The facts herein, which are not in dispute, are that claimants (4 machinists and 1 machinist apprentice) were furloughed on December 15, 1962 and returned to their regular work assignments on January 7, 1963. Claim is being made for compensation for the New Year's Day holiday, January 1, 1963.

The issue involved herein is whether claimants had compensation for services paid them by Carrier credited to 11 or more of the 30 calendar

days immediately preceding January 1, 1963, so as to qualify them for the holiday pay.

The Carrier's position is that the claimants herein did not qualify for the holiday pay in question, because of failure to meet the requirements of Paragraph 2 of Section 1 of Article III, of the August 19, 1960 Agreement, in that claimants did not have 11 compensated days in the 30 calendar days immediately preceding the holiday. Paragraph 2, of Section 1, of Article III, of the Agreement, provides as follows:

> "Subject to the qualifying requirements applicable to other than regularly assigned employes contained in Section 3 hereof, all others who have been employed on hourly or daily rated positions shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him for each of the above-identified holidays if the holiday falls on a work day of the work week as defined in Section 3 hereof, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment."

The Organization contends that claimants were regularly assigned employes and as such were governed by Section 3 of the August 19, 1960 Agreement, governing the parties to this dispute, and were available for service for the workday preceding and the workday following the holiday in question so as to qualify for the holiday pay.

We do not agree with the Organization's contention that claimants are regularly assigned employes. This Division has previously held that furloughed employes, whose lay-off period extends beyond the holidays, are considered as "other than regularly assigned employes." See Third Division awards 14515, 14625, 14635 and 15017.

Inasmuch as claimants are "other than regularly assigned employes," they did not meet the requirements of Paragraph 2, of Section 1, of Article III, of the August 19, 1960 Agreement, when they failed to have 11 or more compensated days in the 30 calendar days immediately preceding the holiday in question and, therefore, the claims must be denied.

AWARD

Claims denied.

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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