Award No. 5314
Docket No. 5026
2-SOU-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the provisions of the current agreement, when on November 30, 1964, Machinist C. A. Bennett, et al., Hayne Car Shop, Spartanburg, South Carolina, were furloughed without a five working days notice.

2. That the Carrier be ordered to cease such violations of the agreement and pay Machinists C. A. Bennett, V. C. Powers, R. G. Furber, G. H. Deadman and P. L. Davis, Hayne Car Shops, Spartanburg, South Carolina, eight (8) hours each at the pro rata rate of pay for failure to give said employes a five working days notice before furlough.

EMPLOYES' STATEMENT OF FACTS: Machinist C. A. Bennett, et al., hereinafter referred to as the claimants, were regularly employed by the Southern Railway Company, hereinafter referred to as the Carrier, at Hayne Car Shop, Spartanburg, South Carolina, on, and prior to November 30, 1964, with assigned work days Monday through Friday, rest days Saturday and Sunday.

On November 23, 1964 Bulletin No. 642 of the same date was posted at approximately 5:00 P. M., after quitting time of the aforesaid employes, furloughing them at the close of business November 30, 1964, copy attached and identified as Exhibit A. Prior to the posting of Bulletin No. 642, Bulletin No. 2051, dated November 19, 1964, was posted stating that Thursday, November 26, 1964, is a legal holiday, therefore, no work will be done at Hayne Car Shop and Hayne Wash & Conditioning Track on that date, copy attached and identified as Exhibit B.

Accordingly, Claimants did not receive a five working days' notice as is required and provided for by the controlling Agreement.

This dispute has been handled with all of the officers of the Carrier designated to handle such disputes, including the highest designated officer of the

A similar claim on behalf of 180 employes of the carmen's class or craft laid off in the force reduction at the end of their respective shifts on November 30, 1964 was also filed and submitted to the Board.

Of significance in connection with the two referred to claims which have been submitted to the Board is the fact that two machinists employed at Hayne affected by the force reduction recognized the fact that the agreement was not violated and that Thursday November 26, 1964 was a working day insofar as they were concerned; also that employes of the sheet metal workers', electrical workers', blacksmiths' and laborers' classes laid off in the force reduction at the same time under the same bulletin notices did **not** question Carrier's action and readily conceded the fact that there was no violation of the agreement, that the notices were posted in accordance therewith and that Thursday November 26, 1964 was a work day or working day.

Thus while employes of six classes or crafts were laid off in the force reduction on November 30, 1964 when expenses were reduced, only employes of the carmen's and machinists' classes or crafts questioned Carrier's action and presented monetary claims. All six of these classes or crafts are members of the Railway Employe's Department, AFL-CIO, which according to the notice letter to the Executive Secretary of the Board is here the proponent.

The evidence is therefor crystal clear that under Rule 1 of the controlling agreement each of the claimants was regularly assigned 7:30 A. M. to 4 P. M., with a meal period of 30 minutes, Monday through Friday with consecutive rest days of Saturday and Sunday, that the seven recognized holidays identified in Rule 6(d) and in Article III of the agreement of August 19, 1960 amending Article II, Sections 1 and 3 of the agreement of August 21, 1954 establishing the paid holiday rule are "work days" or "working days" (the two terms are used synonymously by the parties throughout the agreement) that Thursday, November 26, 1964, Thanksgiving Day, was a work day or working day of the work week of each of the claimants, otherwise they could not have qualified for the holiday pay allowed them, and that by posting bulletin No. 642 on November 23, 1964 (Carrier's Exhibit A) in accordance with the established and recognized practice, which the Association has conceded, each of the five claimants was given five working days' advance notice before the force was reduced at the end of their work day on Monday, November 30, 1964, namely November 24, 25, 26, 27 and 30, and that no claimant has any contract right to be paid for an additional 8 hours at the pro rata rate and in these circumstances only a denial award can be made.

All evidence submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Association's submission reserves the right after doing so to reply thereto and present any other evidence necessary for the protection of its interests.

Oral hearing is requested.

(Exhibits not reproduced).

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.

At Hayne Shop the Carrier maintains car repair forces consisting of carmen, machinists, electricians, sheet metal workers, blacksmiths, and laborers, all of whom are assigned to the first shift except two carmen painters and one carman helper assigned to the second shift.

On November 23, 1964, shortly after the start of the second shift, notice of force reduction of 170 carmen, 2 carmen helpers, 14 painters, 1 painter helper, 3 upholsterers, 12 sheet metal workers, 4 blacksmiths, 11 electricians, 9 machinists and 7 laborers, effective at close of business on November 30, 1964, was given by bulletin. A prior bulletin had given notice that no work would be done at the point on Thanksgiving Day, November 26.

The claim is that the carrier thereby violated Article III of the Agreement of June 5, 1962, requiring not less than five working days' advance notice of abolishment of positions or reduction in force, no emergency conditions within the exception of Article VI of the agreement of August 21, 1954 being involved.

Two of the seven days between November 23 and 30 were the regular rest days of the assigned positions. The claim is that the holiday also was a rest day, leaving only four working days' notice so that the required notice period did not expire until the close of business on December 1, thus entitling each of the claimants to an additional day's pay.

Of the employes affected, claims were apparently presented only by these machinists, and, in a companion case before this division, by most of the carmen craft. These are apparently the first such claims submitted for decision by this Board, no awards in similar cases having been cited on behalf of either party.

There are numerous awards of this Board holding that under the applicable facts and rules and for the purposes of those cases, a holiday constitutes a rest day, and sustaining the claims upon that basis. The Employes note that the pay received by claimants for November 26 was holiday pay, and not pay for working.

On the other hand, the Carrier cites Award No. 76 of Special Board of Adjustment No. 132 and Third Division Awards Nos. 13259 and 14698 holding that paid holidays are working days. In its Award No. 76, Special Board of Adjustment No. 132, said:

> "* * * Thursday was a work day of the position under the rule but because Thursday, November 26, 1953 was a holiday the position was blanked. The blanking of the position on Thursday did not, however, alter its status as a work day. Inasmuch as claimant did not

work any other assignment on that Thursday and worked the same assignment on Tuesday, Wednesday, Friday and Saturday, he should be considered as filling the Indiana assignment during the five consecutive work days of the assignment. Accordingly he should have been paid at the time and one-half rate for the Sunday and Monday rest days."

The two awards of the Third Division ruled substantially to the same effect. The Carrier points out that Article II, Section 1 of the Agreement of August 21, 1954, as amended by Article III of the Agreement of August 19, 1960, entitles regularly assigned employes to holiday pay only "when such holiday falls on a work-day of the work week of the individual employe." It therefore says:

"Thus the paid holiday rule, which is part of the controlling agreement, recognizes that the seven holidays named therein are work days or working days. If they were not work days or working days then no regularly assigned employe could ever qualify for holiday pay because none of the seven holidays named could ever fall on a work day of the work week of any individual employe."

* * * * *

"If Thursday, November 26, 1964 had not been a work day or working day there would have been no point in posting the bulletin. Posting of the bulletin merely indicated that shop forces insofar as was known at that time would not be required to work on Thursday, November 26, 1964, that instead they could observe that day which fell on a work day of their work week as a holiday and under the paid holiday rule would be paid for 8 hours at their respective straight time rates of pay."

These contentions are correct. As Special Board of Adjustment No. 132 said in its Award No. 76, and the Third Division quoted with approval in its Award No. 14698 in supporting those claims:

"* * * Thursday was a work day of the position under the rule but because Thursday, November 26, 1953 was a holiday the position was blanked. The blanking of the position on Thursday did not, however, alter its status as a work day."

While a paid holiday not worked becomes in a sense, a rest day for the particular employe, it differs from ordinary rest days in two respects: first, it is paid for; and second, under the conditions here applicable, it can exist only "on a work-day of the workweek of the individual employe" and unless blanked will be worked; and as was held in the three awards cited above, the blanking of the position for the day did not alter its status as a workday.

If this were not true, the intervention of a recognized holiday would bring a new inequality in the number of paid days required for the notice, by raising the number from five to six. Obviously the change of required notice from "5 days" to "5 working days" was intended to equalize the rights of employes. Since working days" are paid for, the Change equalized at 5 paid days what under the former rule could be 3, 4, or 5 paid days, depending upon the circumstances of each case. It is hardly to be presumed that in equalizing the

variations between 3, 4, or 5 paid days' notice, it was the intent to make a new variation between 5 and 6 paid days, depending upon whether a holiday happened to intervene. At any rate, the rule does not so provide, and the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1967.

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