

Award No. 5521

Docket No. 5354

2-B&O-CM-'68

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. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreement the Baltimore and Ohio Railroad (hereinafter referred to as the Carrier) denied holiday pay for July 5, 1965 to the following employees (hereafter referred to as the claimants):

Joseph J. Rozyla	Alex Sedor, Jr.
Anthony J. Andrulonis	John Voisiet
John J. Bartasavich	Charles R. Bundy
Harry E. Kessler	Ralph Gamble
Paul P. Strouse	Steve Spinda
F. M. Duttry	Joseph Sloff
Martin R. Karetski	Frederick M. Reed
Michael J. Gresak	Pete Surkala

(2) That accordingly, the Carrier compensate each of the claimants in the amount of eight hours each at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: At DuBois, Pennsylvania, the Carrier maintains a Car Repair Shop to perform heavy repairs and to build new freight cars. A mass vacation was scheduled by the Carrier, with the concurrence of the Local Committee, to be taken in the month of July, 1965. This vacation scheduling was agreed to in the month of October, 1964.

In January of 1965, the Superintendent of Shops requested that the mass vacation be advanced to the month of June instead of July as originally scheduled to prevent a disruption in the car building program. The Local Committee agreed. The men were to report to work after the mass vacation period, which was from June 7, 1965, through July 2, 1965. The claimants reported for work on July 6th, as the Shop is always closed on the celebrated holiday.

the qualifying requirement in Section 1 by having "compensation for service paid him by the carrier * * * credited to eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday" or the qualifying requirements in Section 3 of the Rule.

The Carrier submits that the instant claim is not valid at either Parts 1 or 2. The carrier submits that the instant claims are expressly not supported in the working agreement.

(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.

The Organization in its initial ex parte submission to this Board bases this claim for July 5, 1965 holiday pay solely on the premise that the Claimants herein are regularly assigned employes, and, having compensation credited to them to the workdays immediately preceding and following such holiday, they are entitled to the holiday pay as set forth in Article II, Section 3 of the August 21, 1954 Agreement and Article III, Section 3 of the August 19, 1960 Agreement.

The facts herein are that Claimants were on a furloughed status on July 4, 1965, preceding the holiday, but were paid vacation pay for July 2nd.

Carrier's position is that the Claimants herein are not regularly assigned employes within the meaning of Article III, Section 1 and 3 of the August 19, 1960 Agreement; that Claimants did not have compensation for service paid them by Carrier credited to 11 or more of the 30 calendar days immediately preceding the holiday; that vacation pay does not meet the requirement of compensation for service, and even if so, Claimants failed to prove that they had vacation pay credited to 11 or more of the calendar days immediately preceding the holiday; that Claimants were not "available for service on the workday preceding and the workday following the holiday.

In regard to the question as to whether Claimants herein are "regularly assigned" employes, this Board in Award 5121 stated that furloughed employes, whose lay-off period extends beyond the holidays, are considered as "other than regularly assigned employes", citing Third Division Awards 14515, 14625, 14635 and 15017 in support thereof. Therefore, inasmuch as Claimants herein were furloughed beyond the holiday in question, they are "other than regularly assigned" employes, and the applicable provisions of Section 3, Article III of the August 19, 1960 Agreement covering "regularly assigned" employes does not apply in this instance.

Therefore, inasmuch as the Claimants posited their claim solely on the position that they are "regularly assigned employees", and inasmuch as we have found that Claimants are "other than regularly assigned employees", Petitioners failed to meet their burden of proof in this instance. Petitioners never alleged or contended and no proof was offered that they had "compensation for service" credited to 11 or more of the 30 calendar days immediately preceding the holiday, or were "available for service". Having failed to sustain their burden of proof, we must deny these claims.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 24th day of July, 1968.