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Award No. 6100
Docket No. 6018
2-PB&NE-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

PHILADELPHIA, BETHLEHEM AND NEW ENGLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That within the meaning of the controlling agreement and the Memorandum of Understanding dated February 17, 1969, Carman Clarence A. Bogart was unjustly dealt with when he was denied the holiday pay for May 30, 1969.

2. That the Carrier accordingly be ordered to compensate the above named, eight (8) hours at the straight time rate of pay on account of this violation.

EMPLOYES' STATEMENT OF FACTS: Carman Clarence A. Bogart, hereinafter referred to as the claimant, is regularly assigned to position five days a week. The holiday, May 30, 1969 fell on a day of his work week. The carrier did not schedule the claimant to work on the holiday, May 30, 1969.

On the morning of the holiday, May 30, 1969, Mr. Orange P. Sterner, Foreman on duty, called the claimant by telephone and asked him if he wanted to come out to work. Since the claimant had not been scheduled to work this holiday, he had made plans for the day, therefore, informed the foreman that he did not wish to work. The foreman said nothing more except good-by and hung up.

The carrier thereupon denied the claimant the holiday pay for May 30, 1969.

This dispute has been handled with all officers designated to handle disputes, including the highest officer, all of whom have declined to adjust same.

The agreement effective May 1, 1964 is controlling, as it has been subsequently amended.

The brotherhood's position stands unsupported by the memorandum of agreement re holiday work which gave Bogart both the right and obligation to work the emergency vacancy on the holiday. The memorandum clearly provides that if the regularly assigned incumbent of the position to be worked should absent himself because of "sickness, death or similar good cause, vacancies * * * will be filled:"

> "1. **By calling in seniority roster order the men holding a regular assignment who were annulled on the holiday;"** (Emphasis ours.)

The specific language of the agreement clearly requires the senior most unassigned carman to fill an emergency vacancy. Under this specific mandate, there is no valid basis to argue that Bogart was not scheduled to work.

In conclusion, the carrier emphasizes the reasons given in the denial of this claim as set forth in J. G. Long's letter dated October 14, 1969 to the brotherhood's General Chairman A. U. Koch:

> The Company's denial of Bogart's claim for unworked holiday pay is bottomed on the following point: the February 17, 1969 Agreement regarding the method of filling emergency vacancies on holidays requires that the senior unassigned carman (in this case Bogart) be called and scheduled to perform the work. Since the Company was obligated to call Bogart, Bogart's responsibility to work the vacancy was equally great. Obviously, if the Company had failed to call Bogart, a valid runaround claim would have resulted. Since Bogart rejected the right to work the holiday assignment, he also rejected the right to receive unworked holiday pay which is paid to employes who are available but not needed to work on a holiday. Absent any such responsibility on the part of an employe, the February 17, 1969 Agreement regarding the filling of emergency holiday work becomes a meaningless scrap of paper because any carman could reject the work without penalty, thus reducing that agreement to a nullity. For these reasons, I affirm the original denial of the claim."

For the reasons hereinbefore set forth, the carrier submits the instant claim is clearly barred under the express terms of the agreement and the claim should therefore be denied.

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.

Claimant was not originally scheduled to work on the holiday of May 30, 1969. His position was temporarily annulled for that date. However, another employe scheduled to work that day reported off from work because of a serious injury to his son. Since the Claimant was the most senior Carman, he

was called to fill the emergency vacancy. Claimant refused to work and a Carman in junior seniority status accepted and worked the vacancy. Carrier denied holiday pay to the Claimant under Rule 9(b) which reads:

> "An eligible Employe who does not work on a holiday shall be paid 8 times the straight time hourly rate of the job to which he is regularly assigned exclusive of shift and Sunday premiums; provided, however, that if an eligible Employe is scheduled to work on any such holiday but fails to report and perform his scheduled or assigned work, he shall become ineligible to be paid for the unworked holiday, unless his failure was because of sickness or because of death in the immediate family (mother, father (including in-laws), children, brother, sister, husband, wife and grandparents) or because of similar good cause."

It is Carrier's position that the Claimant was scheduled to work on May 30, 1969. Although he was notified four days in advance of that day that his position would be annulled for the holiday, he was also told that he would be required to work if an emergency arose. Since an emergency did arise and since he was called pursuant to the February 17, 1969 Memorandum of Understanding, he was scheduled to work that day. By refusing to do so, he forfeited his holiday pay under Rule 9(b).

Petitioner first argues that the Claimant was not scheduled to work on May 30, 1969 since his position was annulled for that day and he, therefore, qualifies for holiday pay under Rule 9(b). Secondly, Petitioner says that the Memorandum of Understanding dated February 17, 1969 does not "nullify the provision of Rule 9(b)." It only clarifies the overtime procedure of Rule 8(h).

In order to give meaning and intent to the holiday pay provisions, it is necessary to examine all relevant and applicable rules and understandings. What the parties had intended must come from an examination of the entire agreement with all the relevant supplements thereto, and not necessarily from the language of any single rule or provision. Rule 9(b) must be read and applied in conjunction with the agreed to language in the February 17, 1969 Memorandum of Understanding and with Rule 8(h). The latter two read as follows:

> "February 17, 1969
> **Memorandum of Understanding**
>
> **Re: Holiday Work**
>
> Subject to the provisions of the Letter of Agreement dated February 17, 1969, required holiday work will be performed by the regular assigned incumbent of the position to be worked. Any vacancies due to a report off these regular assigned men due to sickness, death, or similar good cause, will be filled:
>
> 1. By calling in seniority roster order the men holding a regular assignment who were annulled on the holiday.
>
> 2. By calling in reverse seniority order the men off on the holiday because of an assigned rest day.
>
> * * * * *

Rule 8(h):

> Record shall be kept of overtime worked; and when possible, Employes, in so far as their qualifications permit, shall be called with a view to distributing overtime equally. Employes shall not be laid off during regular working hours in order to equalize overtime."

The February 17, 1969 Memorandum of Understanding contains clear, unequivocal language. There can be no mistaken intent that "required holiday work will be performed by the regularly assigned incumbent of the position to be worked." **Work was required on the holiday**; he was obliged to accept and work the position. Further there was an emergency. Carrier was obliged to call Claimant. If Carrier had called another employe without first calling Claimant there would be a violation of the Memorandum of Understanding and Claimant would have had a valid claim for compensation. Conversely, Carrier is entitled to whatever remedy may be provided for under the rules when an employe refuses to work such a required assignment.

Rule 9(b) cannot stand alone. It must be read and applied with the February 17, 1969 Memorandum of Understanding. Scheduled work in Rule 9(b) includes "required holiday work" resulting from reporting off vacancies. An employe may not arbitrarily refuse to work such holiday vacancies without accepting the loss of holiday pay. Since the Claimant has shown no good cause for his failure to accept and work on the holiday as set out in Rule 9(b) he became "ineligible to holiday pay for the unworked holiday."

Rule 9(h) has no relevancy to the holiday pay issue. It refers only to equalization of overtime work which is neither raised here nor is it applicable to this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1971.

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