

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: ( System Federation No. 2, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Article II, Section 3, of the Agreement of September 21, 1954, when they denied Carman R. V. Jarrett, Kansas City, Missouri, compensation for Labor Day Holiday, September 1, and compensation for the day following the Holiday, September 2, 1975.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Jarrett in the amount of eight hours (8') at pro rata rate for Labor Day, September 1st, and one hour thirty minutes (1'30") at pro rata rate for September 2, 1975.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 formerly employed as a Carman at Carrier's Kansas City, Missouri facility, with assigned hours of 4:00 PM to 12:30 AM. On Sunday, August 31, 1975, Claimant worked three and one-half hours before he went home, stating that he was not feeling well. He stated that he though he had been stung by something.

Monday, September 1, 1975, was the Labor Day Holiday, and Claimant was not assigned to work on the holiday.

On Tuesday, September 2, 1975, Claimant showed up five (5) minutes before the start of his shift at 4:00 PM.

Claimant attended the reading of the "safety rule of the day", and then was asked to wait while the foreman handed out the work assignments to the other men.

Claimant was then sent to the General Car Foreman's office, where Claimant was provided with a Personal Injury Form, and instructed to fill it out. Claimant refused to fill out the form, and the General Foreman thereupon called in the Superintendent. Carrier's Superintendent instructed Claimant with respect to his duty to fill out the personal injury form, and how the form should be completed. Since Claimant still refused to comply with Carrier's instructions relating to reporting personal work injuries, Claimant was advised he was being held out of service pending investigation, and left the property at 5:30 PM.

Carrier refused to pay Claimant eight hours' holiday pay for Monday, September 1, 1975, and one and one-half hours pay for Tuesday, September 2, 1975.

Carrier denied claim for one and one-half hours' pay on September 2, because Claimant performed "no service or work". Pay was denied for the holiday, September 1, 1975, since no compensation was paid by the Carrier for September 2, the day following the holiday.

Article II, Section 3 of the Agreement reads in pertinent part:

"An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday ...."

Carrier acknowledges that it was not until after Claimant refused to comply with the instructions issued by both the General Foreman and the Superintendent, that Claimant was advised that he was being taken out of service. The record shows that this was one and one-half hours after starting time.

The Board finds, therefore, that Claimant performed compensable "service" up until 5:30 PM. Claimant attended the reading of the "safety rule of the day", waited for the foreman to issue work orders to the other employees, and then went to the General Foreman's office. All of this transpired during Claimant's regularly assigned hours, and under Carrier's direction. Compensable service was thus performed on September 2, 1975. (See Second Division Award No. 6502; also see Third Division Award Nos. 17164, 10062, 3966, and 3462).

Turning now to the question of whether Claimant had to be compensated for eight (8) hours each on the days immediately preceding and following the holiday, in order to qualify for holiday pay.

Article II, Section 3 of the Agreement shows that in order for an employee to qualify for holiday pay under the provisions of this Section, he must have compensation paid him by Carrier credited to the workdays immediately preceding and following such holiday. This Section does not require an employee to have compensation for a minimum number of hours worked on the day preceding or following a holiday, but merely says that he must have "compensation paid by the Carrier credited" to the workdays immediately preceding and following the holiday. (See Second Division Award Nos. 7174, 6893, 6474, 5126, and 2517; also see Third Division Award No. 19128).

Therefore, since Claimant was entitled to compensation for one and one-half hours on September 2, 1975, and had already been compensated for three and one-half hours on August 31, 1975, he qualifies in all respects for the holiday pay. The claim is sustained in its entirety.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this

1000

1000

1000

1000