

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Kansas City Terminal Railway Company as Directed Rail
(Carrier over the Chicago, Rock Island and Pacific Railroad Co.

Dispute: Claim of Employees:

- (1) That under the terms of the applicable agreements, the Carrier improperly denied all qualified employees represented by the Carmen eight (8) hours' Holiday pay for Good Friday, April 4, 1980.
- (2) That, accordingly, the Carrier be ordered to compensate all employees of the Chicago, Rock Island and Pacific Railroad represented by the Carmen's Organization for eight (8) hours' pay for April 4, 1980.

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 employees 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.

After a strike by BRAC employees had commenced, the Chicago, Rock Island and Pacific Railroad (RI) abolished all but clerk positions on August 28, 1979. Pursuant to ICC authority, the Kansas City Terminal Railway was designated a Directed Service Carrier under Emergency Service Order No. 1398, dated September 26, 1979, and was directed to operate the RI commencing October 5, 1979. KCT's service as Directed Rail Carrier (DRC) terminated on March 31, 1980. By a March 24, 1980 notice the KCT-DRC informed the employees hired for the RI operation that it would cease operations and that all craft positions "are hereby abolished, effective 11:59 PM, Monday, March 31, 1980". Good Friday fell on April 4th, 1980, and the Organization claims that the KCT-DRC should pay eight hours' holiday pay for the employees it represents.

The KCT-DRC contends that this Board lacks jurisdiction over the claim because it has functioned under the mandate of the ICC's Emergency Service Order, and it is the ICC which has sole jurisdiction. This contention is not persuasive. Granted that the KCT-DRC's authority is based upon the ICC order. Nevertheless, that order, No. 1398, contains numerous references to the obligations to the RI's employees that the KCT-DRC was directed to assume. For example, at page 19 of that order there is a recapitulation of 49 U.S.C. Section 11125 (b) (4) which provides in part that the DRC shall:

"assume the existing employment obligations and practices of the other carrier for those employees including agreements governing rate of pay, rules and working conditions, and employee protective conditions for the period during which the action of the Commission is effective."

At page 20 of the same order:

"Status of RI Employees--RI employees engaged in directed-service operations will neither lose their status as RI employees nor acquire an employment relationship with the DRC. Regarding those RI employees hired for directed-service operations, the DRC assumes existing RI employment obligations and policies only for events commencing with and for the duration of the directed service."

and at page 38 of the same order:

"Hiring of RI Employees--in carrying out operations directed under 49 U.S.C. Sec. 11125, the DRC shall hire RI employees to the extent those employees had previously performed the directed service. Respecting those employees, the DRC shall assume all existing employment obligations and practices--including agreements governing pay rates, rules, working conditions, and current protective conditions--for the duration of the directed service."

Thus, the terms and conditions of employment of the RI employees hired by the KCT-DRC were governed by the collective bargaining agreements in place when the KCT-DRC commenced operations on October 5, 1979, and these contractual obligations continued throughout the DRC period. Even if it assumed *arguendo* that the Claimants ceased being employees as of 11:59 P.M. March 31, 1980, their claim touches, at least in part, upon a time which occurred during the period when the KCT-DRC operated the RI. It has long been held that disputes arising while the collective bargaining agreement is in place are properly before this Board (Second Division Awards 8970 and 9204).

Therefore, the pivotal issue is whether the Claimants were eligible for Good Friday holiday pay under the applicable contractual provisions. Inasmuch as these employees were furloughed by the RI they were "other than regularly assigned employees" under the September 2, 1969 National Agreement. Article II, Holidays, Section 1(c) provides:

"(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph(b) above, 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 asserts that the Claimants satisfied the conditions of c(1) and c(2) of that Section.

Nonetheless, Article II, Section 1(c) begins with the phrase "Subject to the applicable qualifying requirements in Section 3 hereof...". Therefore, to determine all the qualifications for eligibility for holiday pay, Section 3 must be considered. That aspect of Section 3 dealing with "other than regularly assigned employees" reads:

"Except as provided in the following paragraph, all others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by the carrier is credited;
or

(ii) Such employee is available for service.

NOTE: "Available" as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

For the purposes of Section 1, other than regularly assigned employees who are relieving regularly assigned employees on the same assignment on both the work day preceding and the work day following the holiday will have the workweek of the incumbent of the assigned position and will be subject to the same qualifying requirements respecting service and availability on the work days preceding and following the holiday as apply to the employee whom he is relieving.

Note: Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The conclusion is that in order to be eligible for holiday pay the RI employees in the KCT-DRC's employ had to satisfy the requirements of both Section 1(c) and Section 3.

This Board has had the occasion to consider numerous claims concerning the interpretation and application of Section 3 to employees in different statuses. However, none of these appears to deal with the precise issue at hand. In order for an employee to be eligible for holiday pay he has to have had some contractual connection with the day preceding and the day following the holiday. Section 3 presupposes that there is an employer in being on that holiday, i.e., that the KCT-DRC was in existence on the day preceding and following the holiday as well as on the holiday itself. The directed Service Order provided that "the DRC assumes existing RI employment obligations and policies only for the events commencing with and for the duration of the directed service". With the termination of the KCT-DRC operating authority it became impossible for the Claimants to be eligible for holiday pay for a holiday which occurred after the KCT-DRC, in effect, ceased to exist.

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Award No. 9805
Docket No. 9056-T
2-KCT-DRC-CRI&P-CM-'84

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984