

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, specifically Appendix 10, Article III, Sections 1 and 3 of the September 1, 1974 Agreement (National Agreement amendments effective July 1, 1960) when they improperly refused to compensate the claimants listed in part 2 holiday pay for Christmas Eve, December 24, 1981, Christmas Day, December 25, 1981 and New Years Day, January 1, 1982.
2. That accordingly, W. C. Grandi, R. A. Rinehart, W. E. Childers, R. G. Bozich, M. A. Richardson, J. R. Estrada, D. S. Ettinger, S. W. Zappa, R. G. Lozano, Sr., C. Mendez, G. M. Daniels, D. M. Davis, J. F. Melton, L. O. Hatcher, B. W. Fitzpatrick, P. R. Slead, W. R. Keesee, A. Pantoja, S. R. Drew, R. D. Humphreys, S. D. Burns, W. D. Mogle, D. L. Welsh, K. B. Nichols, D. R. Collins, B. R. Smith, R. L. Mauk, and K. L. White be compensated in the amount of twenty-four (24) hours each at pro rata rate.

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 employes 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.

Claimants were regularly assigned at Carrier's Argentine, Kansas facility. By notice dated December 15, 1981, Claimants were advised by Carrier that they would be furloughed effective at the close of their respective shift(s) on December 23, 1981. Said furloughs were effectuated as announced, and immediately thereafter, as per Appendix 10, Article III of the parties' September 1, 1974 Agreement, the days of Christmas Eve, Christmas Day and New Years Day were observed by Carrier as paid holidays. Claimants, however, did not receive compensation for said holidays.

On January 22, 1982, a claim was filed by Organization on behalf of Claimants for payment for the three (3) aforesated holidays. Said claim, for reasons which will be discussed more fully hereinafter, was denied by Carrier and is the focus of the instant dispute.

Organization's basic contention herein is that Claimants, as per Appendix 10, Article III, Sections 1 and 3 of the parties' September 1, 1974 Agreement, were entitled to receive compensation for the three (3) designated holidays because they (Claimants) "...did have the required seniority, and did work and were compensated eleven (11) or more days in the thirty (30) day period preceding the holidays."

Carrier, on the other hand, maintains that Claimants, because of their furloughed status beginning on December 23, 1981, were not "available for service" on their work days immediately preceding and following each of the disputed holidays, which is another requirement of Appendix 10, Article III. Thus, according to Carrier, Claimants are not entitled to the holiday compensation as requested.

In further support of its position, Carrier also posits that Organization's requested remedy herein would run contrary to the provisions of Rule 10 of the parties' Agreement, which deals with the "filling of short term vacancies," and that such a ruling, which negates the clear language of a countervailing contractual provision, must be avoided.

The thrust of Carrier's argumentation, particularly its focus upon Agreement Rule 10, is that since Claimants were on furlough during the three (3) paid holidays in question, then they (Claimants) were "unavailable for service" because in such status, they were unavailable for Overtime Board work under the provisions of Rule 10. The Board is persuaded that Carrier's argumentation regarding furloughed employees' availability for the filling of short term vacancies on the Overtime Board focuses upon an exceedingly narrow, hypothetical set of circumstances which is really not at issue in the instant dispute. Moreover, the facts of record are sufficiently persuasive to convince the Board that Claimants, although furloughed at the time, nonetheless, did meet the Agreement qualifications which are necessary for an employee to receive holiday pay.

Numerous Boards on this and other Divisions of the National Railroad Adjustment Board have dealt with the specific issue which is currently before us. The directed decisions of those Boards have held that employees, such as Claimants herein, who are on involuntary furlough, are "other than regularly assigned employees." Furthermore, said Boards have additionally ruled that when employees are on involuntary furlough, and when they otherwise qualify for holiday pay, they need not also be held accountable for compliance with additional contractual requirements regarding extra status employees such as Carrier argues in the instant case (Second Division Awards 5095, 5102, 7467, 8014 and 9765; Third Divisions Awards 14674, 14816 and 25351). The Board is similarly inclined to follow the decisions of these Boards and to apply that same rationale and logic to the facts of the instant case as they have been presented.

Lest there be any uncertainty as to the specific application of the remedy which will be directed as a consequence of this Award, the Board has taken judicial note of Carrier's contention that various of Claimants herein may have been on sick leave prior to/and or following the holidays in question; and that, in such event, said Claimants would not have been available for service from a physical standpoint and thus would not have been qualified to receive holiday pay. This Board does not presume to require Carrier to pay holiday pay in such situations since the language of Appendix 10, Article III, Section 3, is sufficiently clear and precludes the payment of holiday pay in such circumstances. Carrier, therefore, as requested, will be directed only to make whole those Claimants who were qualified to receive holiday pay for the three (3) holidays in question and who were improperly denied same. No such payment, however, will be directed for those Claimants who otherwise were unavailable for service because of their already having been placed on sick leave status and having received sickness benefits.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.