Award No. 6551
Docket No. MW-6590

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC LINES

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when it deducted four (4) days' pay from the monthly salary due Water Service Helper H. B. Rowlen for the month of February, 1952;

(2) That Water Service Helper H. B. Rowlen be reimbursed for the monetary loss suffered account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. H. B. Rowlen is employed by the Carrier as a Water Service Helper and is regularly assigned to work Mondays through Fridays. His regularly designated rest days are Saturdays and Sundays and he is not regularly scheduled to work on any of the seven holidays designated by the effective Agreement.

Mr. Rowlen is compensated at a monthly rate of pay to cover any and all services rendered on any of the assigned days of his scheduled work week, whether such services are within or outside the designated hours of his regular daily work period. For services rendered on designated holidays or rest days, he receives compensation over and above his established monthly rate of pay.

On February 15, 18, 19, and 20, 1952, (Friday, Monday, Tuesday, and Wednesday) the claimant was confined to his home account of illness. The Carrier failed to allow him the monthly rate of pay established for the position he held, but deducted four (4) days (32 hours) pay from the salary paid him for his services in February.

Claim was filed requesting that the claimant be reimbursed for the monetary loss suffered by the deduction of four days pay from his February salary.

The Carrier declined the claim.

The Agreement in effect between the two parties to this dispute dated February 1, 1951, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

for work. But if the employe is not available to perform it on each and every day, he is not entitled to pay, in the absence of an agreement to the contrary, for the days he was not available to perform his work."

Consistent with the findings of your Board in the several awards cited in the foregoing, and particularly Award 3226, it is respectfully suggested that the claim in the instant case must likewise be denied.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

OPINION OF BOARD: This dispute arose when Carrier deducted four days' pay from Claimant's monthly rate in February of 1952.

Claimant is regularly assigned to work Mondays through Fridays. He is compensated on a basis of pay to cover any and all services rendered. On the days in question, starting with a Friday, and including Monday, Tuesday and Wednesday the following week, by reason of being confined to his home by illness, he did not work.

Petitioners cite in support of claim Rule 17, as follows:

"Water service foremen, repairmen and helpers, and motor car repairmen and helpers performing intermittent service requiring them to work, wait or travel as regulated by train service and the character of their work shall be paid hourly or monthly rates.

"The monthly rate for employes covered by this rule shall comprehend not less than eight (8) hours service per day for five (5) days per week and shall be based on 169⅓ hours per month, excluding all time traveling or waiting. When required to work on either or both the sixth or seventh days, or on a holiday, they shall be compensated therefor under the provisions of paragraph (j) of Section 2, Rule 14, and Rule 15."

Petitioners contend this rule guarantees employes covered therein that their monthly rate of pay will not be reduced below the rate comprehended, not based, on eight hours' service per day for five days per week. And that it is significant the rule does not stipulate that the monthly rate will be based on 169⅓ hours of service per month. To show this illustrations are given of hours worked as regularly scheduled in the months of 1952, which shows considerable variation: 152 hours in November; 160 hours in February, (month under consideration); 168 hours in March, May, June, August and September; 176 hours in January, April, July and December; and 184 hours in October. That in each of these months employes covered by Rule 17 were compensated at the monthly rate established on the basis of 169⅓ hours. Claimant's monthly salary is considered to be full payment for all services rendered at any and all times on Mondays through Fridays, except when a holiday falls on one of those days. Also citing letters supporting such contention.

Respondent Carrier states the sole issue to be—Is the monthly rate of pay a "Monthly Guarantee Rule?" On behalf of Carrier it is contended that it is not and Awards are cited in support of this position, Nos. 5074, 1234, 2132, 2491, 2622, 4322, 5897 and 6001. Contending the rule is on a monthly basis and not on a guarantee. Also that in order to be paid for time off because of illness there must be specific rule covering such payments.

The rule is not clear in applying the facts, as here presented to the same, however, in view of this we must endeavor to determine the intent of the parties as expressed in the rule to meet a situation as here presented where it is easily forseeable that such situations might frequently occur. We

believe the expressed intent is to pay for days lost of brief duration when occasioned by actual illness. A different situation would result if a monthly rated employe should take a voluntary lay-off. This we do not consider to be in the same category as the instant case involving a brief illness and the record shows he did work 160 hours during the month in question and that in the month preceeding the month under consideration he worked 176 hours and in October of the same year 184 hours.

See Award 5210 in which we said on a record showing that by reason of storm conditions, making route impassable, there was a suspension of service and Carrier made reductions in the monthly pay by reason thereof, that Claimant should be paid the monthly rate. And in the facts in that case it is shown that the rule under consideration contained provision giving the number of hours, 240 or less, in regular assignment, will constitute a month's work and also "* * * and who lose no time on their own account." And in the next sub-section (b) of the rule, provision is made for reduction when such employe "* * * lays off of his own accord * * *."

In the rule under consideration here we find no such provision as that under consideration in Award 5210 on the question of lay-offs. Rule 17 here (set out above) fixes the rate as comprehended not based on eight hours service per day and hence in the record of hours worked in the months of 1952 there is a variance which reflects the true intent as construed by the parties as to the meaning of the rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claims are sustained in accordance with Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1954.