

Award No. 10245

Docket No. MW-9398

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Nashville, Chattanooga & St. Louis District)**

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow eight (8) hours pro-rata holiday pay for the day observed as Christmas, December 26, 1955, and New Year's Day, January 2, 1956, to certain Maintenance of Way employes, in compliance with the provisions of Sections 1 and 3 of Article II, of the August 21, 1954 Agreement and, in consequence thereof:

(2) Each of the following named employees now be allowed sixteen (16) hours' pay at the pro-rata rate of the respective position to which assigned and working on December 23, 1955 and January 3, 1956.

NAME	OCCUPATION
West Austin	B & B Cook
J. R. Hood	B & B Mechanic
C. P. Sherman	B & B Mechanic
H. H. Vincent	B & B Mechanic
W. S. Hale	B & B Mechanic
J. B. Holland	B & B Helper
C. S. Rutledge	B & B Helper
L. R. Nation	B & B Laborer
J. F. Giddens	B & B Laborer
W. T. Brown	B & B Laborer

EMPLOYEES' STATEMENT OF FACTS: Claimants are regularly assigned hourly and/or daily rated employes of the Carrier's Atlanta Division Bridge and Building Gang. Claimants each received compensation credited by the Carrier to December 23, 1955 and to January 3, 1956, the Carrier assigned work days immediately preceding and following Christmas of 1955 and New Years of 1956.

There are several reasons that I made this request, the most important one I think is that it has become increasingly difficult for Maintenance of Way men to meet their current bills and provide for their families in a satisfactory manner, due mostly to the rise in the cost of living. This situation could be relieved to some degree if Rule 18(h) of the Agreement was not applied this year and I respectfully request that you give serious consideration to setting aside the provisions of this rule for the lay-off period, December 22, 1956—January 1, 1957.

Please advise.

Yours very truly,

/s/ W. P. Gattis
General Chairman."

It will be noted the General Chairman stated "There are several reasons that I made this request . . .", one of which was the recognition of the fact that employes laid off during the Christmas holiday season would not qualify for pro rata holiday pay under Article II of the August 21, 1954 National Agreement.

The Employes' notice of August 10, 1955, of their desire to eliminate Rule 18(h) and their request of September 24, 1956, that the provisions of Rule 18(h) be set aside and not applied during the Christmas holiday period December 22, 1956—January 1, 1957, conclusively shows that in progressing the instant claims to the Third Division they are now attempting to obtain by administrative fiat something which they have been unable to obtain by negotiation.

Carrier submits, in view of the foregoing facts, there is no basis for the Employes' claim, contractual or otherwise, for which reason same should be declined.

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants to this dispute are employed in Bridge and Building gang, Atlanta Division, and all have the same assigned workweeks. These workdays being Monday through Friday.

In 1955 Christmas Day fell on Sunday as did New Year's Day on January 1, 1956.

At the close of the days work on December 23, 1955 these men were all laid off until January 3, 1956.

The question arises as to whether these men qualified for holiday pay under Article II, Section 3 of the terms of the Agreement.

It is the contention of the Carrier that the employes did not qualify for this holiday pay because compensation was not credited to the employes on the work days immediately following Christmas Day and immediately preceding New Year's Day.

There is also the question as to whether there was a violation of the Letter Agreement dated May 20, 1955.

It is evident from the record that the Claimants had no assigned work-weeks while they were laid off and were not regularly assigned employees. It is further evident that under Section 3 of Article II, these employees did not qualify for the payments here sought.

It is evident that the Carrier has a right under Rule 18(h) to lay the Claimants off as it did. It is further evident that these men were not regularly assigned employees. We feel that the following awards uphold this ruling: 7430; 7978; 8052; 10048.

This Board does not deal in equity and does not have the power to modify or reform an Agreement.

For these Claimants to have justified their claim they must be a regularly assigned hourly or daily rated employee and none of these men fell outside this classification.

Furthermore, the holiday must fall on a regularly assigned workday and the employees have been paid for a workday immediately preceding and following the holiday in question. For this reason none of the Claimants qualify for the holiday payments sought.

No one can question the legal right of the Carrier to lay off employees coming under this category and for that reason the claims must be denied as there was no violation of the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claims Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1961.