Award No. 11178
Docket No. MW-9792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier violated Section 1 (b) of the Agreement signed at Washington, D.C., on May 20, 1955, when it failed and refused to allow eight (8) hours' pro rata pay for the day observed as Christmas of 1955 and New Years of 1956, to certain Maintenance of Way employes;

(2) The Carrier further violated Section 1 (d) (Carrier's Proposal No. 7) of the Agreement signed at Washington, D. C., on May 20, 1955, when it failed to render a valid and recognizable decision of disallowance as required by the provisions of Article V of the August 21, 1954 Agreement, made applicable by the provisions of the aforesaid Section 1 (d);

(3) Each regularly assigned hourly rated employe who received compensation from the Carrier which was credited to December 23, 1955 and to January 3, 1956, but who was deprived of the holiday pay referred to in part one (1) of this claim, now be allowed sixteen (16) hours' pay at the pro rata rate of the position to which assigned on such dates;

(4) The individual claimants and the amount due each of them be determined by a joint check of the payroll records of the Carrier in accordance with the principles enunciated in Interpretation No. 1, to Award 1421, Serial No. 28.

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned hourly rated employes and each received compensation credited by the Carrier to December 23, 1955, and to January 3, 1956, the assigned work days immediately preceding and following the days observed as Christmas of 1955 and New Years of 1956.

and your claim is respectfully disallowed." Certainly such decision is valid and certainly it was recognizable. What more could be said?

We submit, therefore, that there has been no violation of Section 1 (d) of the May 20, 1955 Agreement.

CONCLUSION

We have shown that the lay-off of December 1955 was prompted by the same consideration that has prompted lay-offs in the latter part of December throughout the years. The occurrence of holidays is incidental and has not been a consideration in the timing of lay-offs either before or after May 20, 1955.

Not only have there been no lay-offs for the **sole purpose** of defeating holiday pay, but their occurrence has not even been considered.

We have, also, shown that in disallowing this claim the Carrier's decision was valid and recognizable. When no rule of the agreement is cited by the Employes and no violation of the agreement could be bound by the Carrier, it cannot be seriously claimed that the Carrier failed to give a reason for its disallowance.

We submit that there has been no violation of the agreement, and it naturally follows that no employe has been improperly denied pay on Christmas Day 1955 and New Year's 1956.

This claim is wholly without merit and it should, in all respects, be denied, and we respectfully request the Board to so find.

Carrier has included in this submission all relevant, argumentative facts and evidence with respect to this claim, all of which have heretofore been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 19, 1955 Carrier notified certain employes in the Maintenance of Way Department that they would be laid off following the close of work Friday, December 23, 1955 until the morning of January 3, 1956. On January 9, 1956 the General Chairman filed a claim on behalf of the employes affected for holiday pay for Christmas Day and New Year's Day as provided in Article II of the 1954 National Agreement. The claim was denied on January 11, 1956, Carrier's officer stating that the Agreement had not been violated. On appeal Carrier's General Manager denied the claim on February 4, 1956, taking the same position that there had been no violation of the Agreement.

Both parties raise certain procedural objections to consideration by this Board of the claim on its merits. On the property Petitioner asserted that Carrier "failed to render a valid and recognizable decision of disallowance as required by the provisions of Article V of the August 21, 1954 Agreement." This is the time limit rule. It is sufficient answer to Petitioner's contention to say that there is nothing in Article V requiring "a valid and recognizable decision of disallowance". In its submission Petitioner for the first time contends that Carrier's officials who denied the claim did not state the reasons for their action within the time limit fixed by Article V, Section 1(a) of the National Agreement of 1954.

Carrier asserts for the first time in its submission that the claim is one on behalf of unnamed claimants, does not meet the mandatory requirements of Article V, Section 1(a) and is therefore barred from consideration.

We dispose of these procedural objections of both parties by adhering to the well established practice of the Board to refuse consideration of such matters when they were not raised during the progressing of the claim on the property. In this connection Petitioner argues that it can object here to the failure of Carrier's highest officer to state his reason in the final denial on the property. We do not agree. The record shows that Petitioner did not raise this question in its appeal to Carrier's General Manager, and did not complain to such General Manager, after his final denial of the claim, of the alleged failure to state an adequate reason for the denial. In our view this amounts to a waiver of the right to assert this point before this Board.

We proceed therefore, to a consideration of the claim on its merits. Petitioner says: In view of Carrier's instruction concerning the lay off following close of work on December 23, 1955 until January 3, 1956, then Friday, December 23, 1955 and Tuesday, January 3, 1956 were the work days immediately preceding and following the days observed as Christmas Day 1955 and New Year's Day 1956; that claimants worked those days and were credited with compensation for those days thus entitling them to Holiday pay for Christmas Day and New Year's Day. Furthermore, Petitioner asserts that Carrier's principal reason for ordering the lay off of the employes at that time was to avoid payment of the holiday pay now being sought.

Carrier contends that under the correct interpretation of Article II, Section 3 (Holiday Rule) the claimants were not entitled to holiday pay for Christmas Day and New Year's Day because compensation paid by Carrier was not credited to work days immediately preceding and following each of the holidays. It says that claimants were not entitled to Christmas holiday pay since they did not work on Tuesday, December 27, the work day immediately following the holiday (Christmas Day fell on Sunday and was observed on Monday, December 26). And that Claimants were not entitled to New Year's holiday pay because they did not work on Friday, December 30, the work day immediately preceding that holiday (New Year's Day fell on Sunday and was observed on Monday, January 2). Carrier denies that the lay offs were for the purpose of avoiding the payment of holiday pay. Instead it says the lay off was due to the anticipated seasonal drop in business which regularly occurred at this time of year and was handled in the same manner as in prior years.

We believe that the position of the Carrier is the correct one and is supported by recent awards of this Board on the same point. Petitioner's interpretation of Article II, Section 3 rests upon the thesis that "work days" as used in the Section (referring to qualifying days preceding and following a holiday) mean only days on which an employe is scheduled for work. We consider that a strained interpretation and no evidence indicates that the parties intended it to have any such meaning.

Under the express terms of Section 3 to qualify for holiday pay an employe must have had compensation credited to the work day preceding and the work day following each holiday. In Section 3 holiday is used in the singular. Here the Claimants did not work on either December 27, the work day following Christmas Day or December 30, the work day preceding New

Year's Day. Therefore, they failed to qualify for holiday pay for either of the holidays.

Prior awards of this Board have consistently denied claims under the same circumstances as those in this case. Award 10284 involved exactly the same situation between Maintenance of Way Employees and the N.C. and St. L. RY. See also Awards 10245 and 10502. Award 2690 of the Second Division denied a claim of shop craft employes for holiday pay where the lay off was for the same period and under exactly the same circumstances as in our case including the same holiday pay rule. We have been unable to find any awards supporting Petitioner's interpretation of the Holiday Rule.

There is nothing in the record indicating that Carrier's reduction in force was motivated by a desire to deny certain men holiday pay. In fact the evidence is to the contrary, i.e. Carrier had for many years laid off groups of employes during the Christmas season. And we find nothing to suggest that it acted upon any different considerations in 1955 than those in prior years, namely that experience indicated reduced business was to be expected during the holiday season. We conclude, therefore, that the claim is without merit.

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 Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.