

Award No. 13973
Docket No. SG-13921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al that:

(a) The Carrier violated the Agreement with the Brotherhood of Railroad Signalmen governing the hours of service, working conditions, and rates of pay of cooks employed in the Signal and Electrical Department when it refused to properly compensate monthly-rated Cook H. E. Lee for December 1961.

(b) The Carrier now be required to compensate Cook H. E. Lee in the amount of \$69.69, for the difference in the amount of pay received and that he should have received for December 1961.

(Carrier's File: SG-17262)

EMPLOYEES' STATEMENT OF FACTS: During the month of December 1961, Claimant H. E. Lee held a regularly assigned Cook's position on a signal gang on the Memphis Division under supervision of Foreman S. E. Grogan. Christmas Day 1961 fell on a Monday and all members of Mr. Grogan's gang, except Cook Lee, requested permission to be off Christmas week and the Carrier granted the request.

Cook Lee is a monthly rated employe and his monthly rate of pay covers all service rendered during regular work periods up to 174 hours in any calendar month. Cook Lee's position in Foreman Grogan's gang was not abolished during the time that the gang was granted permission to be off duty. When Cook Lee did not agree to be off duty during Christmas week, the Carrier instructed him to report to another signal gang at Knoxville, Tennessee on the 26th of December 1961 to relieve the cook in that gang who was on vacation during Christmas week. As Mr. Lee's position had not been abolished in Foreman Grogan's gang, he did not report to the gang at Knoxville. The Carrier took the unilateral position that it could take Cook Lee and assign him to another position during the time the members of the gang to which he was assigned elected to be off duty. This, the Brotherhood contends is a violation

The evidence is conclusive that Cook Lee simply did not desire to work December 26 through 29, 1961. This is evidenced by the fact that he declined the opportunity to work with Foreman Crowe's gang on those dates. Had he actually desired to work on December 26, 27, 28 and 29, 1961, he would not have told Mr. Culpepper that he would be off with the rest of the gang. He, like Mr. Dills, the senior signalman assigned to Foreman Grogan's gang, would have reported to Signal Foreman Crowe at Coster and worked in accordance with the accepted and recognized practice throughout the years.

The claim presented to the Board constitutes an attempt to exact money from the Carrier for no justifiable reason. It is not supported by the plain language of the agreement in evidence. In these circumstances, the Board cannot do other than make a denial award.
(Exhibits not reproduced)

OPINION OF BOARD: On December 19, 1961, all members of Foreman Grogan's signal gang who were not to be on vacation during the coming Christmas week, except Acting Foreman Dills and Claimant, requested permission to lay off without pay during the week following Christmas Day. Their request was granted and Dills and Claimant were told that if they desired to work the time they could work the week on another gang. Dills accepted the offer; Claimant, on the following day on being asked if he intended to work on the other gang informed the supervisor that if the other members of Mr. Grogan's gang were off, he would be automatically off. He did not report to work during the Christmas week.

Claimant, while not denying the statement attributed to him above, claims that if he said it, he did not mean that he was waiving pay for the time he was off, but only that since there would be none left for him to cook for, he would be automatically free of the cooking requirements.

We find that Carrier was correct in accepting Claimant's statement as adding him to those voluntarily laying off for the time involved, and we will therefore deny the claim.

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: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1965.