

Award No. 14364
Docket No. CL-12942

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5058) that:

(a) Carrier violated the Agreement dated August 19, 1960, at Santa Fe National House One, Chicago, Illinois, when it failed and refused to allow holiday pay to the thirty-nine (39) employees hereinafter listed, and,

(b) The Carrier shall now pay for the holiday, February 22, 1961, the amount of \$19.08 to the following employees:

Name	Days Worked In 30 Day Period Preceding The Holiday	Clock No.	Seniority
Kerr, L.	17	350	10-06-59
Pawluk, N.	17	351	11-04-59
Barrett, L.	17	352	11-05-59
Rezutko, T.	17	354	3-01-60
Zyzak, A.	15	356	3-01-60
Workman, D.	15	358	3-01-60
Delisia, F.	14	359	3-01-60
Mikashus, A.	17	360	3-10-60
Kress, R.	17	361	3-23-60
Culafic, V.	17	363	3-25-60
Thompson, C.	17	365	4-12-60
Molaro, L.	16	366	4-18-60
Shilney, G.	17	367	4-19-60

Days Worked In 30 Day Period Preceding The Holiday			
Name		Clock No.	Seniority
Harlozinski, W.	17	368	5-19-60
Sabaj, F.	17	369	8-02-60
Fleming, F.	17	370	8-02-60
Wasielewski, J.	14	371	8-03-60
Chierci, R.	16	385	8-09-60
Rivers, A.	17	389	8-10-60
Stimac, A.	17	372	8-03-60
Pruitt, J.	18	373	8-03-60
Caponigro, A.	15	374	8-03-60
Parks, R. J.	18	375	8-03-60
Kokinis, J.	18	377	8-04-60
Durkin, J.	18	379	8-04-60
Sepulveda, R.	15	381	8-04-60
Pastrano, F.	17	382	8-05-60
Edelstein, L.	17	383	8-05-60
Taylor, C.	18	384	8-07-60
Gorski, H.	18	386	8-09-60
Pizano, R.	17	390	8-29-60
Pruitt, R.	16	391	8-29-60
Clark, C.	18	392	8-29-60
Miller, L.	15	393	8-29-60
Prieto, D.	12	394	8-29-60
Ryzke, M.	13	395	8-30-60
Pitak, J.	13	396	8-31-60
Swolinski, W.	12	398	9-02-60
Maserczak, J.	12	400	9-02-60

EMPLOYEES' STATEMENT OF FACTS: Claimants named above are employed in the Santa Fe National House One, Chicago, Illinois, as un-assigned employees and are used to provide vacation relief and protect such other vacancies as are available.

Attention of the Board is directed to the fact that each claimant had:

- (1) Performed service in excess of 11 days during the 30 calendar days immediately preceding the Washington's Birthday Holiday; and,
- (2) Had a seniority date for more than 60 calendar days prior to the holiday; and,

- (1) be available for call at all times
- (2) obtain permission to lay off
- (3) immediately respond to calls at all times

There are, of course, no such rules to be found in the 'applicable agreement', i.e., the current Clerks' Agreement in effect for the employees you represent, and Article III, Holidays, of the August 19, 1960 Agreement was never intended to permit an individual off-in-force-reduction employee to determine his availability under that rule when he is free to do as he pleases, and has no obligation whatsoever under the rules of that agreement to either hold himself available for service or immediately respond to calls for service.

Yours truly,

/s/ L. D. Comer"

OPINION OF BOARD: These claims arise under the August 19, 1960 Agreement, Part III, Holidays, which amended, effective July 1, 1960, the August 21, 1954 Agreement on the same subject. We are specifically concerned with Section 3 of Article III of the 1960 Agreement, which provides holiday pay for "all others" (other than regularly assigned employees).

It clearly provides that such employees shall qualify for such holiday pay if ". . . on the workday preceding and the workday following the holiday they satisfy one or the other of two clearly defined conditions:

- "(i) Compensation for service paid by the carrier is credited; or
- (ii) Such employee is available for service. * * *"

The record before us shows that each of these 39 Claimants (a) performed compensated service on eleven or more days during the 30 calendar days immediately preceding the holiday; and (b) had a seniority date for more than 60 calendar days prior to the holiday.

With respect to the alternate qualification—"such employee is available for service"—the parties themselves define "available" to mean that an employee is "available" unless he "lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

Claimants herein were unassigned or extra employees used to provide relief for vacation and other vacancies as well as extra work under Rule 12 and other applicable rules of the Clerks' Agreement. They fall in the category of other than regularly assigned employees within the meaning and intent of the August 19, 1960 Agreement. We are not here concerned with Article IV of the August 21, 1954 Agreement which was to ". . . become effective November 1, 1954, except on such Carriers as may elect to preserve existing rules or practices . . .", because this Carrier elected to preserve existing rules and practices.

There is no charge or evidence in the record in this case that Claimants laid off or failed to respond to a call. They were in an involuntary layoff status.

The Agreement providing, as it does, holiday pay to such employees where they meet one or the other of the two stipulated requirements, and these Claimants having met all the requirements of the August 19, 1960 Agreement, a sustaining award is required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.