

Award No. 14365
Docket No. CL-13007

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-5065) that:

(a) Carrier violated Article III of the August 19, 1960 Agreement when it failed and refused to allow holiday pay to C. M. LaNier; and,

(b) Carrier shall now pay C. M. LaNier eight (8) hours at the pro-rata rate for each holiday, July 4, September 5, and November 24, 1960.

EMPLOYEES' STATEMENT OF FACTS: Claimant, C. M. LaNier, with a seniority date of November 17, 1951, is an unassigned or extra employe at Emporia, Kansas, and, as such, is used to provide relief for vacations and other vacancies as well as to perform service as an extra or unassigned employe under Article VI, Section 5 of the current Clerks' Agreement. Commencing with the 30th calendar day immediately preceding July 4, 1960, up to and including November 25, 1960, he performed service for the Carrier as follows:

Stockyard Laborer — June 5, 8, 9, 10, 11, 12, 16, 18, 25, 26, 27, 28 and 29; July 2, 3 and 7.

Baggage Helper — August 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23 and 24.

Stockyard Laborer — September 1, 2, 3, 4 and 8; October 25, 26 and 29.

Baggage Helper — November 2.

The above-quoted language makes it necessary to look to the applicable agreement, i.e., the current Clerks' Agreement, to determine if that agreement contains rules which require off-in-force-reduction employees such as Mr. LaNier to:

- (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, 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: Claimant in this case was an unassigned or extra employee, and was used to provide relief for vacations and other vacancies, as well as to perform service as an extra or unassigned employee under Article VI, Section 5, and other applicable rules of the Clerks' Agreement.

He is also considered as falling in the category of other than a regularly assigned employee 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.

In the light of our Award No. 14364, we must look to the facts here to determine if this Claimant met the requirements of the August 19, 1960 agreement.

We find that this Claimant

- (a) Performed compensated service on 11 or more days during the 30 calendar day periods immediately preceding the holidays claimed;
- (b) Had a seniority date far in excess of 60 calendar days prior to any of the holidays claimed.

There being no evidence in this record that this Claimant laid off of his own accord or failed to respond to a call, pursuant to the rules of the applicable agreement, we must and do find that the Claimant was "available for service" within the plain language of the "NOTE" to Section 3 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.