



Award No. 14390
Docket No. MW-14358

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CENTRAL OF GEORGIA RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when it failed to compensate B&B Laborer J. W. Barlow in accordance with the agreement, thereby depriving him of holiday pay for Christmas Eve, Christmas Day and New Year's Day, and as a result thereof:

(2) Mr. J. W. Barlow now be paid 24 hours at his respective straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. W. Barlow has established and holds seniority as B&B laborer from April 23, 1951 in accordance with agreement rules. He is an hourly rated employee.

Effective with the close of the day's work on December 15, 1961, he was furloughed as the result of being displaced in the exercise of seniority.

He was called and performed service at the coal chute at Macon, Georgia on Saturday, December 23, Christmas Eve, December 24 and Christmas Day, December 25, 1961. He was compensated therefor at his time and one-half rate.

Effective with the close of the day's work on December 25, 1961, he was again furloughed.

He performed not less than eleven (11) days of compensated service in the thirty (30) calendar days immediately preceding the Christmas Eve and the Christmas Day holidays of 1961 and the New Year's Day holiday of 1962.

He was available for service on the workdays immediately preceding and following the subject holidays.

The Carrier failed and refused to allow him twenty-four (24) hours' pay at his pro rata rate for the three holidays here in question.

The claim is not supported by any agreement rule, interpretation or practice; therefore, it is without merit and is denied in its entirety.

* * * * *

(And other docket claims were handled.)

APPROVED:

CENTRAL OF GEORGIA
RAILWAY COMPANY

/s/ G. N. Certain
G. N. Certain,
Director of
Personnel"

/s/ J. L. Ferrell
J. L. Ferrell
Assistant Director of
Personnel

Mr. Certain wrote General Chairman Padgett under date of October 5, 1962, the following letter:

"Reference is made to our conference held in this office on Monday, October 1, 1962.

I send you herewith four (4) copies of Memo of Conference confirming our handling, and my full and final decision on each of the subjects discussed.

Please acknowledge receipt for the benefit of the record."

General Chairman Padgett acknowledged receipt per his letter of October 12, 1962.

The next communication of record is a letter dated June 20, 1963, from Mr. H. C. Crotty, President, Brotherhood of Maintenance of Way Employees, to Mr. S. H. Schulty, Executive Secretary of the Adjustment Board, giving notice of intent to appeal this claim to the Board for adjudication.

The Petitioners have failed in all handlings on the property to cite a rule, interpretation or practice which gives them what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated by the Carrier, the demands of the Petitioners have been denied at each and every stage of handling on the property. The claim has no semblance of merit.

The rules and working conditions agreement between the Central of Georgia Railway Company and its employees represented by the Brotherhood of Maintenance of Way Employees is effective September 1, 1949, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was furloughed effective with the close of work December 15, 1961 through the exercise of seniority.

The record shows he was later called by Carrier to work, and performed work for Carrier on December 23, 24 and 25, 1961 and was compensated at time and one-half.

This claim is for holiday pay for 24 hours at the straight time rate.

Claimant, through Organization, asserts that he is entitled to holiday pay by virtue of Sections 1 and 3 of Article II of the November 1954 Agreement, as amended by Article III of the 1960 Agreement. The pertinent portions of those sections read:

"Subject to the qualifying requirements applicable to other than regularly assigned employees contained in Section 3 hereof, all others who have been employed on hourly or daily rated positions shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him for each of the above-identified holidays if the holiday falls on a work day of the work week as defined in Section 3 hereof, provided (1) compensation for service paid him by the Carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment.

* * * * *

All others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

* * * * *

(ii) Such employee is available for service.

NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties 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."

Carrier contends that Claimant was not entitled to holiday pay because he was a furloughed employee, and as such, failed to comply with Section 2, Article IV of the Agreement which reads:

"2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work."

It is unnecessary in the instant case to decide whether Article III or Article IV is applicable. It is clear from the record that Claimant was "available" by virtue of the fact that he responded to Carrier's call and went to work.

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 violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.