



Award No. 14431
Docket No. CL-12739

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-4938) that:

(a) Carrier violated the Agreement dated August 19, 1960, at Somerville, Texas, when it failed and refused to allow holiday pay to Joe F. Charanza, Joe F. Schumacher, Ben Popek, and Lorenza O. Orozco; and

(b) The Carrier shall now pay for holiday, September 5, 1960, to the following employees:

Joe F. Charanza	8 hrs. at rate of	\$18.06 per day.
Joe F. Schumacher	8 hrs. at rate of	\$16.70 per day.
Ben Popek	8 hrs. at rate of	\$16.70 per day.
Lorenza O. Orozco	8 hrs. at rate of	\$18.48 per day.

EMPLOYEES' STATEMENT OF FACTS: Claimants named above have seniority dates as follows:

No. 1	Joe F. Charanza	5/9/60
No. 2	Joe F. Schumacher	5/9/60
No. 3	Ben Popek	5/9/60
No. 4	Lorenza O. Orozco	6/1/60

and are employed in the Somerville, Texas Treating Plant Yards as extra or unassigned employees and are used to provide vacation relief and protect other vacancies. During the 30 day period just prior to the Labor Day Holiday and to and including September 15, 1960, they performed service as follows:

No. 1 — JOE F. CHARANZA

August 1 Helper, Overhead Crane	August 22 Laborer, Common
August 2 Helper, Overhead Crane	August 23 Laborer, Common
August 3 Helper, Overhead Crane	August 24 Helper, Locomotive Crane
August 4 Helper, Overhead Crane	August 25 Checker
August 5 Helper, Overhead Crane	August 26 Helper, Locomotive Crane

Article III 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 the applicable agreement at Somerville to either hold himself available for service or immediately respond to calls for service.

Yours truly,

/s/ L. D. Comer"

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are employed in the Somerville, Texas Treating Plants Yards as extra or unassigned employees and used to provide vacation relief and protect other vacancies. They had each performed compensated service of at least 11 days during the 30 calendar days immediately preceding the Labor Day holiday, 1960, and each had a seniority date for at least 60 calendar days preceding the said holiday. None had asked to be excused or refused to respond for work on the workdays preceding and following the holiday.

Petitioners contend that they have met all provisions necessary to qualify for the holiday pay claimed and that Carrier's refusal to so compensate them is violative of the pertinent rules of the current Agreement:

"ARTICLE III — HOLIDAYS

Article II, Sections 1 and 3 of the Agreement of August 21, 1954, are hereby amended, effective July 1, 1960, to read as follows:

Section 1. Subject to the qualifying requirements applicable to regularly assigned employees contained in Section 3 hereof, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

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.

The provisions of this Section and Section 3 hereof applicable to other than regularly assigned employees are not intended to abrogate or supersede more favorable rules and practices existing on certain carriers under which other than regularly assigned employees are being granted paid holidays.

NOTE: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above enumerated holidays.

Section 3. A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

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:

- (i) Compensation for service paid by the carrier is credited; or
- (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."

Claimants were "other than regularly assigned employees" and were "available for service" on the workdays preceding and following the subject holiday as "available" is defined in the Agreement. There is no specific rule or provision of the applicable Agreement which might in anyway limit or otherwise construe this definition of "available."

This Board concurs with Special Board of Adjustment No. 355 which sustained a similar claim in Docket No. 272. (See also recent Third Division Award 14364 and 14365.) The Agreement was violated.

Article IV of the August 21, 1954 Agreement was not adopted by the Carrier herein and is thus not involved in this grievance.

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

The Claim shall be sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966