

Award No. 14515
Docket No. MW-13739

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TENNESSEE CENTRAL RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow certain hourly rated employees (identified in the attachment hereto) eight hours' straight time pay for the Fourth of July and/or Labor Day holidays of 1960.

(2) Each of the claimants be allowed the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim.

A T T A C H M E N T

B&B DEPARTMENT EMPLOYEES

1. A. McCormick (F&L)	7. C. Treadway (F&L)	13. H. Hembree (F&L)
2. F. Givens (F&L)	8. A. Green (F&L)	14. J. L. Holley (F&L)
3. Othel Carr (F&L)	9. R. A. Hughes (F)	15. J. F. Rollins (F&L)
4. Dallas Loden (F&L)	10. J. K. Dickson (F&L)	16. E. L. Porter (F&L)
5. K. Loden (F&L)	11. W. Albright (F&L)	17. S. F. Thomas (F&L)
6. V. Treadway (F&L)	12. B. W. Gupton (F&L)	

TRACK DEPARTMENT EMPLOYEES

18. J. T. Mahaney (F&L)	33. J. M. Jones (F&L)	48. J. Bates (F&L)
19. L. Phillips (F&L)	34. C. White (F&L)	49. H. J. Toler (F&L)
20. Baxter Herd (F&L)	35. H. Leffew (F&L)	50. G. McLean (F&L)
21. E. Gambrell (F&L)	36. D. Bohanan (F&L)	51. W. McLean (F&L)
22. Robert Bates (F&L)	37. Luna Oaks (F&L)	52. U. Williams (F&L)
23. Joe Crudup (F&L)	38. A. Herd (F&L)	53. W. Vowell (F&L)
24. A. Strawther (F&L)	39. S. Ingram (F&L)	54. W. C. Fickey (F)
25. N. Bennett (F&L)	40. D. Robertson (F&L)	55. J. Vaughn (F&L)
26. Walter Keys (F&L)	41. G. Hawkins (F&L)	56. C. Massey (F&L)
27. L. J. Green (F&L)	42. J. Williams (F&L)	57. F. Willoughby (F&L)
28. Walter Ryon (F&L)	43. L. B. Wilson (F&L)	58. B. Phillips (F&L)

29. C. Searcy	(F&L)	44. K. Phillips	(F&L)	59. L. Williams	(F&L)
30. V. Emmet	(F&L)	45. H. Felts	(F&L)	60. T. Dishman	(F&L)
31. J. D. Morris	(L)	46. W. O. Holley	(F&L)		
32. Roy Higgins	(F&L)	47. W. Chapman	(F&L)		

Note: "F" indicates the Fourth of July holiday pay claimed.

"L" indicates the Labor Day holiday pay claimed.

EMPLOYEES' STATEMENT OF FACTS: The Claimants named in the attachment to our Statement of Claim were the holders or regular assignments bulletined to work Mondays through Fridays of each week.

Each of the claimant B&B Department employees whose names are listed in the attachment to our Statement of Claim, except for Mr. R. A. Hughes, worked on June 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, July 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, August 1, 2, 3, 4, 5, 8, 9, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, September 6, 7, 8, 9, 12, 13, 14, 15, 16 and 26, 1960. Mr. Hughes worked all of the workdays in June and on July 5, 6, 7 and 9, 1960.

Each of the claimant Track Department employees whose names are listed in the attachment to our Statement of Claim, with the exception of Messrs. J. D. Morris and W. C. Fickey, worked on June 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, July 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, September 6, 7, 8, 9, 12, 13, 14, 1960.

Each of the Claimants had established over 60 days' seniority prior to the subject holidays.

Each of the Claimants is an hourly rated employee.

None of the Claimants laid off of his own accord or failed to respond to a call.

The Carrier has refused to allow each Claimant eight hours' straight time pay for the Fourth of July and/or Labor Day holidays of 1960.

The Agreement in effect between the two parties to this dispute dated September 1, 1942 together with supplements amendments, and interpretations thretho is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: All pertinent correspondence between the parties in connection with the handling of this case on the property which is hereinafter referred to is attached hereto marked Carrier's Exhibits Nos. 1 to 11, inclusive.

To effect economies in accordance with the practice it had been generally following for several years before the instant claims had their inception, Carrier reduced force by laying off most but not all of its hourly rated Maintenance of Way employees during periods having a bearing on these claims as follows:

June 25 to July 4, 1960 inclusive

July 22 to July 31, 1960 inclusive

Aug. 26 to Sept. 5, 1960 inclusive

Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The parties hereto are in accord that the applicable time limit rule of the agreement has been complied with in the handling of this dispute on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim, that sixty named employees be allowed eight hours' straight time pay for July 4, 1960 and Labor Day, September 5, 1960, is one of several claims involving these parties for holiday pay under the provisions of Article III of the August 19, 1960 Agreement.

In June, 1960, Claimants were hourly rated B&B and Track Department employees regularly assigned to work five days per week Monday through Friday with Saturday-Sunday rest days. Carrier reduced the force by laying off Claimants during the following periods:

June 25 through July 4, 1960
July 22 through July 31, 1960
August 26 through September 5, 1960

Due to the manner in which these employees were furloughed and notified to resume work on their assignments on expiration of the furlough or lay-off period, the parties are in dispute on the issue of whether Claimants were "regularly assigned" or "other than regularly assigned" as of July 4 and September 5, 1960. Since there is no disagreement about the fact that these employees were laid off or furloughed at Carrier's direction and that the lay-off period extended beyond the holiday, we hold that Claimants were "other than regularly assigned". To be entitled to the holiday pay, Claimants must meet all the qualifying requirements of Article III of the August 19, 1960 Agreement applicable to "other than regularly assigned employees" whose hypothetical workweek is specified as Monday through Friday. They must have sixty or more days of seniority or continuous service. They must have compensated service paid them by the Carrier credited to eleven (11) or more days in the 30-day period immediately preceding the holiday. And on the workday preceding and the workday following such holiday they must 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."

Except as noted below, Claimants qualified for the holiday pay, (1) They had the necessary seniority. (2) They had compensated service paid by Carrier credited to eleven or more days during the 30-day period (June 4 through July 3) immediately preceding July 4, 1960 and the 30-day period (August 6 through September 4) immediately preceding Labor Day September 5, 1960. (3) In this case, the lay-off period ended and Claimants resumed service on their assignments on the workday following the holidays; as to that workday they qualified under paragraph (i). They performed no service on the work-

day preceding the holidays, but they were "available for service" on such day under paragraph (ii) and the Note. It is clearly evident from the uncontroverted facts that Claimants performed no service on the workday before the two holidays solely because they had been furloughed by direction of the Carrier. They did not lay off of their own accord. As the Board ruled in Awards 14364, 14365 and 14431, involving similar claims for holiday pay, Claimants were in an involuntary lay-off status. Moreover, Carrier does not show or even allege that it needed Claimants' services on such days or that any of them failed to respond to a call, pursuant to the rules of the applicable agreement, for service on such days.

Carrier asserts that six Claimants (No. 22-Robert Bates, No. 30-Vernon Emmett, No. 45-Hershel Felts, No. 46-W. O. Holley, No. 47-W. R. Chapman, and No. 48-Jesse Bates) were allowed holiday pay for the September 5, 1960 holiday. The claim in behalf of these six employees is for July 4 and Labor Day, and they qualified for both. If these six men have been allowed pay for September 5, they will be due pay only for July 4, 1960.

The claim of No. 31- J. D. Morris, is for Labor Day only. His claim is denied, as he did not have the necessary seniority or continuous service as of September 5, 1960.

Claimant No. 32-Roy Higgins, qualified only for July 4 holiday pay. His claim for Labor Day is denied, as the record shows he was off sick the entire month of August 1960.

Claimant No. 55-James Vaughn, qualified only for September 5, 1960 holiday pay. His claim for July 4 is denied, as he did not have compensated service paid by Carrier credited to eleven or more days in the 30-day period preceding the holiday.

Claims of No. 10-J. K. Dickson, No. 12- B. W. Gupton, No. 25-Normie Bennet, No. 33-Joe M. Jones, and No. 50-G. C. McLean, Jr., are for July 4 and Labor Day. Their claims are denied for both holidays, as the record discloses that these men did not meet one or more of the qualifying requirements (particularly the eleven-day requirement) specified in Article III.

All other named Claimants qualified for the holiday pay as claimed, and their claims are accordingly sustained.

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 respectfully 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 by Carrier.

A W A R D

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1966.

Keenan Printing Company, Chicago, Illinois

Printed in U. S. A.