

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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 employes (identified in the attachment hereto) eight hours' straight time pay for the Christmas holiday of 1960 and/or the New Year's day holiday of 1961.

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.

ATTACHMENT

1. W. H. McLean	(C&N)	22. J. D. Morris	(C&N)
2. H. J. Toler	(C&N)	23. Walter Simpkins	(C&N)
3. Charlie White	(C&N)	24. Vernon Emmett	(C&N)
4. F. C. Willoughby	(C&N)	25. Hershel Felts	(C&N)
5. Joe Crudup	(C&N)	26. W. C. Fickey	(N)
6. E. C. Hood	(C&N)	27. Horton Leffew	(N)
7. Leo Phillips	(C&N)	28. Walter Ryon	(N)
8. James Vaughn	(C&N)	29. L. J. Green	(N)
9. Normie Bennett	(C&N)	30. Billy Ray Phillips	(N)
10. Robert Bates	(C&N)	31. Solon Ingram	(N)
11. Luna Oaks	(C&N)	32. Kelly Phillips	(N)
12. Dewitt Robertson	(C&N)	33. John Williams	(N)
13. A. Herd	(C&N)	34. Leonard Williams	(N)
14. Ernest Gamble	(C&N)	35. Baxter Herd	(N)
15. J. T. Mahaney	(C&N)	36. C. A. Searcy	(N)
16. Dock Bohannon	(C&N)	37. Charlie Massey	(N)
17. G. C. Hawkins, Jr.	(C&N)	38. Albert Strawther	(N)
18. Walter Keys	(C&N)	39. J. M. Jones	(C&N)
19. Jessie Bates	(C)	40. Otis Patterson	(C&N)
20. W. O. Holley	(C&N)	41. Roy Higgins	(C&N)
21. S. Williams	(C&N)		

NOTE: "C" indicates Christmas holiday pay claimed. "N" indicates New Year's day holiday pay claimed.

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

Each of the Claimants, with the exception of Walter Simpkins, had established over 60 days' seniority prior to the respective holidays for which claim is made.

Each Claimant is an hourly rated employe.

None of the Claimants laid off of his own accord and, although the Carrier did not assign any of the Claimants to work on the work days immediately preceding and/or following the subject holidays, each of the Claimants was available for service. None of the Claimants failed to respond to a call on the work days immediately preceding or following the subject holidays.

The Carrier has refused to allow each Claimant eight hours' straight time pay for the Decoration Day and/or Fourth of July holidays of 1961.

The Agreement in effect between the two parties to this dispute dated September 1, 1942, together with supplements, amendments, and interpretations thereto 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 is attached hereto marked Carrier's Exhibits Nos. 1 to 12, inclusive.

All of the men identified in Attachment to President Crotty's letter of June 25, 1962 to Mr. S. H. Schulty, Executive Secretary, Third Division, as claimants in this case, were hourly rated employes of Carrier's Maintenance of Way Department on December 26, 1960 and January 2, 1961, the holidays involved, but were furloughed in accordance with practice the Carrier had been generally following to effect necessary economies for several years before the instant claims had their inception.

None of the men identified as claimants in this docket had compensation for service paid them by the Carrier credited to 11 or more of the 30 calendar days immediately preceding the holiday for which pay is claimed.

Seven of the claimants thus identified, Robert Bates, W. O. Holley, S. Williams, Vernon Emmett, Hershel Felts, J. M. Jones and Roy Higgins were allowed eight hours' straight time pay for December 26, 1960 on the regular payroll for the last half of December 1960 account that day being included in the period of their paid vacations.

None of the claimants filed claims for holiday pay supported by evidence of their being qualified therefore for either of the two holidays involved in this dispute and no evidence of their being qualified therefore has been furnished Carrier by the Organization in filing and handling the instant claims on their behalf.

Article III — Holidays of the Agreement of August 19, 1960, the governing rule, reads:

the last work day of the preceding work week shall be considered the work day 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 work day preceding and the work day 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 employe is available for service.

NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employe 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.

For purposes of Section 1, the work week for other than regularly assigned employes shall be Monday to Friday, both days inclusive, except that such employes who are relieving regularly assigned employes on the same assignment on both the work day preceding and the work day following the holiday will have the work week of the incumbent of the assigned position and will be subject to the same qualifying requirements respecting service and availability on the work day preceding and following the holiday as apply to the employe whom he is relieving.

For other than regularly assigned employes, whose hypothetical work week is Monday to Friday, both days inclusive, if the holiday falls on Friday, Monday of the succeeding week shall be considered the workday immediately following. If the holiday falls on Monday, Friday of the preceding week shall be considered the workday immediately preceding the holiday.

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 handling of this dispute on the property fulfilled the applicable requirements of the Railway Labor Act and the time limit rule of the agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The holiday pay claims covered by this docket are for Monday, December 26, 1960, and/or January 2, 1961 in behalf of 41 Claimants who were laid off by the Carrier on December 16, 1960.

Based on our decision in Award 14515, Claimants No. 20, W. O. Holley, No. 21, S. Williams, No. 24, V. Emmett, No. 25, H. Felts, No. 39, J. M. Jones, No. 41, Roy Higgins, No. 26, W. C. Fickey, No. 27, Horton Leffew, No. 28, Walter Ryon, No. 29, L. J. Green, No. 30, Billy Ray Phillips, No. 31, Solon Ingram, No. 32, Kelly Phillips, No. 33, John Williams, No. 34, Leonard Williams, No. 38, Albert Strawther, No. 35, Baxter Herd, No. 36, C. A. Searcy, No. 37, Charlie Massey met the qualifying requirements of Article III of the August 19, 1960 Agreement, applicable to other than regularly assigned employes for

New Year's Day, January 2, 1961 holiday only and their claim is sustained for that day. All other Claimants failed to qualify for either the Christmas or New Year Day holiday, as they did not meet the eleven days' requirement in the 30 day period immediately preceding the holiday. Their claims are accordingly denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent prescribed in the 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.