

Award No. 14635
Docket No. MW-13917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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 pay the track laborers named in Part 2 hereof, holiday pay for Labor Day, Monday, September 4, 1961, and as a result thereof:

(2) Track Laborers M. Crowder, G. L. Walton, W. Thomas, J. O. Hawkins, O. Felton and G. Casteline be paid eight (8) hours' pay at their pro rata hourly rate account of the violation referred to in Part 1.

EMPLOYEES' STATEMENT OF FACTS: Each of the claimants have established and hold seniority as Track Laborers in excess of sixty (60) calendar days in accordance with Agreement rules. Each claimant is an hourly rated employee.

Each claimant was assigned to and worked with Section Gang No. 40, East Point, Georgia, until its abolishment on August 31, 1961.

Each claimant performed more than eleven (11) days of compensated service in the thirty (30) calendar days immediately preceding the Labor Day holiday.

Each claimant was available for service on the workdays immediately preceding and following the subject holiday.

The Carrier failed and refused to allow each claimant eight (8) hours' pay at his pro rata rate for Labor Day, September 4, 1961.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

Mr. Collins wrote General Chairman Padgett under date of May 11, 1962, the following letter:

"Referring to our conference held in this office on Monday, April 30, 1962.

Herewith are four (4) copies of Memorandum of Conference confirming our handling and my full and final decision on each of the subjects discussed.

Please acknowledge receipt."

General Chairman Padgett acknowledged receipt per his letter of May 4, 1962.

The next communication of record is a letter dated January 11, 1963, from Mr. H. C. Crotty, President, Brotherhood of Maintenance of Way Employees, to Mr. S. H. Schulty, Executive Secretary of the Third Division, National Railroad Adjustment Board, Chicago, Illinois, 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.

OPINION OF BOARD: This claim arises under the August 19, 1960 Agreement, Article III--Holidays, which amended, effective July 1, 1960, the November 5, 1954 Agreement (National Agreement of August 21, 1954) on the same subject. We are specifically concerned with Section 3 of Article III of the 1960 Agreement which provides holiday pay for "other than regularly assigned employees."

The facts of this case are not disputed. On Thursday, August 31, 1961, Claimants, who were regularly assigned Track Laborers on Section 40, East Point, Georgia, were furloughed by the direction of the Carrier, and none performed service on the last workday immediately preceding the September 4, 1961 Labor Day holiday, or on the first workday immediately following the holiday. Since there is no disagreement about the fact that these claimants were furloughed and/or laid off at Carrier's direction and that the lay-off period extended beyond the holiday, claimants are considered as "other than regularly assigned employees."

To be entitled to holiday pay in this category, claimants must meet the qualifying requirements of Article III of the August 19, 1960 Agreement applicable to "other than regularly assigned employees."

The record before us shows that each claimant held seniority or continuous service of sixty days or more and had compensation credited to eleven

(11) or more days during the thirty (30) calendar days immediately preceding the holiday. There then remains the satisfying of 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.”

It is evident from the record that Claimants performed no service on the workday immediately preceding the Labor Day holiday nor the first workday immediately following the holiday solely because they had been furloughed by the direction of the Carrier. Claimants, then, did not lay off of their own accord. Carrier has not shown or alleged 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.

The foregoing involves the identical question that this Board fully discussed and answered in our Awards 14364, 14365 (Lynch), 14390 (Zumas), 14431 (Rambo) and Awards 14515 through 14524 (Brown). What we said and held therein is applicable and controlling here.

Carrier contends that Claimants are not entitled to holiday pay because each was a furloughed employe and, as such, failed to comply with Section 2, Article IV of the November 5, 1954 Agreement (August 21, 1954 Agreement) by filing their names and addresses indicating their availability for service within the meaning of Subsection (ii) of Section 3 of the August 19, 1960 Agreement. “Available” is defined in the “Note” under Subsection (ii) 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.” The parties are in sharp disagreement as to which are the “rules of the applicable agreement.” Carrier urges that Article IV of the November 5, 1954 Agreement (August 21, 1954 Agreement) is the intended rule of the “applicable agreement.” The Organization, on behalf of the Claimants, points out the undisputed fact that neither the “Note” nor any portion of Article III of the August 1960 Agreement implies that Article IV of the 1954 Agreement is to be the controlling rule in determining whether or not furloughed employes are entitled to holiday payment. It would have been a simple matter, had the parties to this Agreement desired Article IV of the 1954 Agreement to have been a determining factor, to have clearly stated so in their definition of “available” set out in the “Note” of Section 3, Article III of the 1960 Agreement. They did not.

We find that there is no ambiguity in the language of Article III or the “Note” in Section 3. It clearly interprets the meaning of “available”, and in view of this Board’s having previously decided the specific issue in Awards 14625 and 14626 (Engelstein), we think it unnecessary to belabor the point any further.

In view of what we have said, we find that all the above-cited Awards are applicable and controlling herein; therefore, this claim is 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 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.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1966.