

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railroad Company:

On behalf of signal employees C. W. Green, D. E. Rhone, and R. Latimer, Jr., for eight hours' pay each at their respective pro rata rate of pay for January 2, 1961, a holiday, because the Carrier failed and/or refused to properly apply the holiday provisions of the August 19, 1960, Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Claimants worked on Friday, December 30, 1960, and were notified on said date that they would be laid off in force reduction that evening. They were available for work on Monday, January 2 (observed as a holiday), and on Tuesday, January 3, 1961, but were not recalled.

Mr. A. R. Fenton entered eight hours' holiday pay on his first half January 1961 time sheets for Claimants Green and Rhone. On January 16, 1961, the Carrier's Superintendent, Mr. H. D. Fish, advised Mr. Fenton in writing that the holiday pay agreement provides that an employee must work the day before and the day after a holiday to receive compensation for such holiday — and that inasmuch as Messrs. Green and Rhone were laid off in force reduction December 30, 1960, they did not qualify for holiday pay, and that he (Mr. Fenton) should correct his pocket time book accordingly.

Under date of January 19, 1961, the Brotherhood's Local Chairman presented a claim to Superintendent Fish for one day's pay for the January 2, 1961 holiday for Signal Department Employees C. W. Green, D. E. Rhone, and Ralph Latimer, Jr. citing the August 19, 1960 Agreement (Brotherhood's Exhibit No. 1). The Superintendent's letter of denial of January 24, 1961, is Brotherhood's Exhibit No. 2.

The Brotherhood's General Chairman entered an appeal to the General Manager on March 1, 1961 — with a copy thereof to Superintendent Fish as notice of the rejection of his decision (Brotherhood's Exhibit No. 3). The General Manager's letter of denial of March 10, 1961, is Brotherhood's Exhibit No. 4.

qualify for holiday pay, ' * * * be ready, willing and able to work on the day before and the day following the holiday * * *,' there must also be some criterion other than a mere statement by an off-in-force-reduction employee to determine if he or she was ready, willing and able to work on such days. That criterion was supplied by the committees negotiating the rules when they defined the word 'Available' in the 'Note' appearing following the second paragraph of Article III, Section 3 of the August 19, 1960 Agreement, and particularly that portion thereof reading:

' * * * 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.'

The above-quoted language makes it necessary to look to the applicable agreement, i.e., the current Signalmen's Agreement, to determine if that agreement contains rules which require off-in-force-reduction employees such as Messrs. Green, Rhone and Latimer to:

- (1) be available for call at all times
- (2) obtain permission to lay off
- (3) immediately respond to calls at all times.

There are, of course, no such rules to be found in the 'applicable agreement,' i.e., the current Signalmen's Agreement, and Article III -- Holidays 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 that agreement to either hold himself available for service or immediately respond to calls for service.

Yours truly,

/s/ L. D. Comer"

OPINION OF BOARD: Claimants worked on Friday, December 30, 1960, the last workday preceding the New Year's Day of 1961. They were laid off after work on December 30th. There is no evidence that any of them were recalled on January 2nd (which was observed that year as the New Year's holiday) or on January 3rd. None were paid for the holiday.

There being no dispute that the claimants qualified under the other conditions of Article III, Section 3 of the August 19, 1960 National Agreement, the basic issue present to us whether the claimants were "available for service" on the work day following the January 2, 1961 holiday as that phrase is used in the second paragraph of Article III, Section 3.

We have recently discussed and disposed of this question in our Award Numbers 14364, 14365 (both involving the same Carrier), 14390, 14431, and 14515 through 14524. There being no evidence that the claimants either laid off of their own accord or failed to respond to a call, we cannot find, as Carrier would have us do, that claimants failed to satisfy the second of the two conditions prescribed in the second paragraph of Article III, Section 3 of the August 19, 1960 Agreement. Our award will sustain the claim.

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

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1966.