

265
Award No. 15692
Docket No. CL-15274

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5712) that:

1. Carrier violated the Clerks' Rules Agreement when it failed to compensate employee L. P. Schaefer for the holiday occurring on December 25, 1963.
2. Carrier shall now be required to compensate employee L. P. Schaefer for eight (8) hours at the pro rata rate of Check Clerk for the holiday occurring on December 25, 1963.

EMPLOYEES' STATEMENT OF FACTS: Employee L. P. Schaefer is an employee holding seniority in the Car Department under the Brotherhood of Railway Carmen of America Agreement. His seniority date in that department is January 4, 1958. He was furloughed in that department as of March 9, 1962.

Employee Schaefer was used to perform service under the Clerks' Agreement as follows:

Vacation relief work on Ice House Laborer position at Austin, Minnesota from December 4 to 10, 1963, a total of 5 days.

Relieved Employee H. J. Rafferty on Perishable Freight Inspector position from December 12 to 20, 1963, a total of 9 days.

Relieved on Check Clerk position at the freight platform at Austin, Minnesota on December 24 and 26, 1963, a total of 2 days.

He was denied holiday pay for December 25, 1963, Christmas Day.

"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." (Emphasis ours.)

As an other than regularly assigned employee as of the December 25, 1963 holiday, claimant Schaefer did not qualify for holiday pay on that date under the aforequoted provisions of the holiday pay rule because he did not have a seniority date for at least 60 calendar days preceding the holiday under the Clerks' Agreement nor did he have at least 60 calendar days of continuous service preceding the holiday under the Clerks' Agreement.

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman of the Clerks' Organization on this property, under date of June 2, 1964 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. Gilligan under date of August 12, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, holding seniority in the Car Department from January 4, 1958, under the Agreement of the Brotherhood of Railway Carmen of America, was furloughed March 9, 1962. On December 4, 1963, Claimant was hired as a vacation relief employee to perform service on positions under the Clerks' Agreement. In that status he performed 16 days' vacation relief service, including the 24th and 26th of December, 1963. He was not paid for the Christmas holiday. Petitioner alleges violation of its Agreement and the Non-Ops Holidays Agreement of August 13, 1960, to which it is a party.

The issue presented is whether the 60-day seniority date or active service requirement, under Section 1 of Article III of the Holiday Agreement can be satisfied by combining service performed under the Carmen's Agreement and the Clerks' Agreement.

The rule which we have been petitioned to interpret is:

"ARTICLE III-HOLIDAYS of the National Agreement signed at Chicago, Illinois on August 19, 1960 provides:

SECTION 1. * * * 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. * * *"
(Emphasis ours.)

Article VII of the Holiday Agreement provides that "This Agreement shall be construed as a separate Agreement by and on behalf of each of the said carriers and its said employees. . . ."

Inasmuch as the Claim is predicated upon an alleged violation of the Clerks' Agreement, we find that to qualify for holiday pay Claimant was required to have "a seniority date for at least 60 calendar days or [have] 60 calendar days of continuous active service preceding the holiday" under those Agreements. Claimant did not satisfy either of those conditions. We will deny 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

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