

Award No. 16089

Docket No. MW-15384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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 employees (identified in the Note hereto) eight (8) hours' straight time pay for the Thanksgiving and/or Christmas holidays of 1963 and/or the New Year's Day holiday of 1964.

(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.

Farris Givens (T, C & N)
Othel Carr (T & N)
Kenneth Loden (T, C & N)
Dallas Loden (T & W)
Arnel Green (T & N)
Claude Treadway (T, C & N)
Virgil Treadway (T, C & N)

NOTE: T indicates Thanksgiving holiday pay claimed.
C indicates Christmas holiday pay claimed.
N indicates New Year's holiday pay claimed.

EMPLOYEES' STATEMENT OF FACTS: Each of the claimants has established and holds more than sixty (60) days of seniority and is an hourly rated employee.

Claimants Farris Givens, Kenneth Loden, Claude Treadway and Virgil Treadway were furloughed prior to the Thanksgiving and the Christmas holidays of 1963 and the New Year's holiday of 1964. These claimants each performed eleven (11) or more days of compensated service for the Carrier within the thirty (30) calendar days preceding each of the aforementioned

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."

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for holiday pay under the provisions of Article III of the August 19, 1960 Agreement. Claimants were furloughed by the Carrier prior to the holidays in question.

This Board has recently interpreted the Agreement by holding, in Award 14515 (Brown), as follows:

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 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
- (i) 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'."

Carrier has questioned Claimants' right to include vacation payments in calculating "compensation or service paid by the Carrier." This right was established by our decisions in Awards 14501, 14674, and 14816.

Carrier has attempted to challenge the claims, of some of the employees involved, by submitting figures to show that they failed to receive the requisite "compensation for service paid by the carrier" to qualify for holiday pay. Our review of the entire record indicates that such evidence was not considered by the parties on the property, which precludes us from such consideration here. (See Second Division Award 5131.)

Under the facts and record presented, and based upon the above cited authority, we must allow the claim as presented.

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 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 by Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February 1968.