Award No. 19128

Docket No. MW-19384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to allow holiday pay to Track Laborers L. Vaxter, J. Diaz, J. Ramos and A. Alvarez for Memorial Day, 1970 (System File 3843/780.3/601. 517/132.6).

(2) Each of the aforenamed employes be allowed eight (8) hours of pay at their respective straight time rates.

EMPLOYES' STATEMENT OF FACTS: Each of the claimants was regularly assigned to an hourly-rated position prior to April 29, 1970.

The claimants received compensation credited by the Carrier to the work days immediately preceding and following Memorial Day (Decoration Day) 1970. They were entitled to holiday pay therefor under the provisions of Article III of the May 17, 1968 National Agreement which, insofar as it is pertinent hereto, reads:

"ARTICLE III — HOLIDAYS

Effective January 1, 1968, Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employes covered by this Agreement, other than employes represented by the Hotel & Restaurant Employes and Bartenders International Union, is hereby further amended in the following respects:

Section 1. Section 1 of Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, is hereby amended to read as follows:

Section 1. Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided each hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays:

Messrs. Alvarez and Vaxter worked the day prior to holiday and then on the day after the holiday they chose only to work a portion of the day and laid off for personal reasons such as to have car worked on, personal business, etc. No mention was made of illness of any type or emergency.

Messrs. Diaz and Ramos likewise on May 29, 1970 performed only part of the day and laying off for similar reasons.

OPINION OF BOARD: This is a claim for holiday pay for Memorial Day, 1970. The facts, which are not in dispute, are that Claimants A. Alvarez and L. Vaxter worked eight (8) hours on May 29, 1970 and worked only four (4) hours and thirty (30) minutes June 1, 1970. Claimants J. Diaz worked six (6) hours on May 29, 1970 and eight (8) hours on June 1, 1970 and J. Ramos worked four (4) hours and thirty (30) minutes on May 29, 1970 and eight (8) hours on June 1, 1970.

The question involved herein is whether or not Claimants satisfied the requirements of Article III, Section 2 of the May 17, 1958 National Agreement, governing the parties to this dispute.

The pertinent provision of Section 2 of Article III of the May 17, 1968 National Agreement provides as follows:

"ARTICLLE III — HOLIDAYS

Section 2.. Section 3 of Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, is hereby amended to read as follows:

Section 3. A regularly assigned employe shall qualify for the holiday pay provided in Section I hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday * * *."

Carrier's argument is that a regularly assigned employe is compelled to work a full eight (8) hours on each of the qualifying work days and does not qualify for holiday pay by being credited with compensation on only a portion of either of the work days that immediately preceded or followed the holiday.

A close persual of Section 2 of Article III of the May 17, 1968 Agreement shows that in order for an employe to qualify for holiday pay under the provisions of this Section, he must have compensation paid him by Carrier credited to the work days immediately preceding and following such holiday. This Section does not require an employe to have compensation for a minimum number of hours work on the day preceding or following a holiday, but merely says that he must have "compensation paid him by Carrier credited" to the work days immediately preceding and following the holiday and thus Carrier's contention is without merit (Awards — Second Division 5126, 5127, 5128).

Therefore, in view of the fact that Claimants received compensation paid them by Carrier credited to the work days immediately preceding and following the holiday in question, and each Claimant qualifies in all other respects for the holiday pay, this claim will be sustained.

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 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: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.

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