NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24504
THIRD DIVISION Docket Number MW-23920

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Fmployes
(Chicago, Rock Island & Pacific Railroad 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 of its Maintenance of Way employes holiday pay for Labor Day, September 3, 1979 (System File L-126-1787/3-P-634).

(2) Each of the claimants* be allowed eight (8) hours of pay at their respective straight-time rates because of the violation referred to in Part (1) hereof.

*The claimants are identified within our initial letter of claim presentation dated October 16, 1979 which will be reproduced within our initial submission."

OPINION OF BOARD: The facts involved in this matter are not in dispute. The Claimants herein are hourly rated employes holding seniority in the Maintenance of Way Department of Carrier. On August 28, 1979 BRAC initiated a strike against this Carrier and on the same day the positions involved in this claim were abolished by Carrier and the employes thus furloughed. On September 3, 1979, Labor Day and the claim day, there were no Maintenance of Way positions or work on the Carrier. On October 5, 1979 the Kansas City Terminal Railway was directed to operate this Carrier and the employes involved herein were recalled on or about that date. It is also a matter of record that compensation was paid to the Claimants herein for eleven or more of tie thirty calendar days immediately preceding Labor Day (September 3, 1979); that their seniority dates extended more than sixty calendar days preceding the holiday in question; that they had more than sixty calendar days of continuous active service preceding the holiday; and that their employment status was not terminated prior to the holiday. On January 25, 1980 the U. S. District Court for the Northern District of Illinois ordered the liquidation of this Carrier. The strike against Carrier by BRAC and the UTU was never resolved.

Carrier first maintains that this Board does not have jurisdiction over this dispute and the only proper tribunal is the Reorganization Court. The Board does not agree. At the time that this Claim arose Carrier was operating as a common carrier and the Claimants had an employment relationship with this Qrrier. Thus any liability which Carrier may have towards the Claimants herein should not be placed in an inferior status to that of other creditors with debts stemming from that same period. Furthermore the issue of jurisdiction under this particular

circumstance has been adjudicated in a number of prior awards, see for example Second Division Award No. 9314.

With respect to the merits, Rule 25 is applicable. That Rule provides in pertinent part:

"Section 1:

(a) Holiday pay for regularly assigned employees shall be at the pro rata rate of the position to which assigned.

(b) For other than regularly assigned employees, if the holiday falls on a day on which he would otherwise be assigned to work, he shall, if consistent with the requirements of the service, be given the day off and receive eight hours' pay at the pro rata rate of the position which he otherwise would have worked. If the holiday falls on a day other than a day on which he otherwise would have worked, he shall receive eight hours' pay at the pro-rata hourly rate of the position on which compensation has accrued to him prior to the holiday.

(c) Subject to the applicable qualifying requirements in Section 3 hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph (b) above, 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, noncompliance with a union shop agreement, or disapproval of application for employment."

"Section 3:

A regularly assigned employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

"Except as provided in the following paragraph, all others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by the carrier is credited; or

(ii) 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 oft of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

Carrier asserts that the Employes herein involved would not have crossed the picket line, as conceded by Petitioner. From this it is argued that the only issue in this dispute is the availability of the Claimants. Carrier asserted that Claimants were not available since they could not have been available in view of their unwillingness to cross the picket line. From this, according to Carrier, it follows that they are not entitled to holiday compensation.

Petitioner alleges that the Claimants were "other than regularly assigned employees" and met the criteria for such employes embodied in Rule 25. The Organization argues that the sole remaining issue is whether or not the Claimants were available for service on the work day preceding and the work day following the holiday. Petitioner states that each Claimant was available but not called by Carrier; they did not lay off of their own accord; and they did not fail to respond to a call. Hence, it is concluded that the Claimants were eligible for the holiday pay at issue.

The Board notes that Carrier's argument concerning Claimant's availability vis a vis the picket line is in effect moot. This, due to the fact that it would be unrealistic to require Claimants to show that they would have crossed a picket line to perform non-existant work (Award No. 20269), since their positions had been abolished. In a number of previous disputes this Board has ruled on the identical problem of holiday eligibility in the light of a strike, see for example Awards 14890 and 20427 as well as Award 20269.

For the same reason as just noted, this Board has concluded that monthly-rated employees are, for holiday pay purposes, handled separately and are not contemplated in this Award (Third Division Awards 22979 and 22623).

Carrier requests this Board to ignore "shop-worn" or dubious precedents and deny this Claim which would result in unjust enrichment of Claimants. While the Board recognizes the desirability, even the urgent necessity of evaluating each Claim on its own particular facts and merits, it cannot agree with Carrier. In a dispute such as this which has been the subject of a series of awards under virtually identical circumstances and under the very same contractual terms, to ignore and upset well reasoned prior awards can only lead to uncertainty and chaos which would benefit no one.

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.

A W A RD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUST MENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.