

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe 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 Trackman O. K. Butler holiday pay for Washington's Birthday (February 17, 1986) (System File 90-16-862/11-1080-20-10).

(2) Claimant O. K. Butler shall be allowed eight (8) hours of pay at the trackman's straight time rate because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to this dispute, Claimant held seniority as a trackman and was regularly assigned to a trackman position on Section Force 41 at Cleburne, Texas.

On January 31, 1986, Claimant was sent a letter informing him that:

"Following review of recent medical information, it has been concluded that you will be held out of service and placed on leave of absence February 15, 1986, at the end of the 15-day vacation you started January 27, and referred to Mr. Ron Gaiser for rehabilitative procedures."

In 1986, the Washington's Birthday holiday was celebrated on Monday, February 17. Claimant did not receive holiday pay.

Appendix 2, Section 1 of the Agreement provides in pertinent parts:

"APPENDIX NO. 2

NON-OPERATING NATIONAL
HOLIDAY PROVISIONS

(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 had a seniority date for at least 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."

Section 3 provides:

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

For purposes of Section 1, other than regularly assigned employees who are relieving regularly assigned employees on the same assignment on both the work day preceding and the work day following the holiday will have the workweek of the incumbent of the assigned position and will be subject to the same qualifying requirements respecting service and availability on the work days preceding and following the holiday as apply to the employee whom he is relieving. Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The Organization contends Carrier arbitrarily placed Claimant on medical leave and he then became an "other than regularly assigned employee" whose eligibility for holiday pay is governed by Section 1(c) of Appendix 2.

Further, the Organization contends that even if, arguendo, Claimant was a regularly assigned employee he was "available" within the meaning of the Note to Section 3 of Appendix 2.

Carrier argues Claimant was and remained a regularly assigned Trackman and Section 3 of Appendix 2 applies.

In support of its position the Organization relies upon Third Division Award 14625 in which regularly assigned employees whose jobs were abolished and who were furloughed by force reduction at the end of the last work day prior to a holiday and who therefore did not work on the first work day after the holiday were treated as other than regularly assigned employees. We believe the distinction between medical leave of absence and a force reduced furlough is significant. In Third Division Award 23831, a regularly assigned employee who did not work on his first scheduled day after a holiday due to prearranged surgery was held not to be qualified for holiday pay. That principle is applicable here. We find Claimant's status as a regularly assigned employee was not changed by his being placed on leave of absence for medical reasons and we note no evidence was introduced to suggest Carrier acted arbitrarily in placing Claimant on such leave or that the action lacked justification. Neither do we agree Claimant was "available" within the meaning of the Note to Section 3 of Appendix 2.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.