

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31135
Docket No. MW-31828
95-3-94-3-122

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago, Central & Pacific Railroad Company

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

- (1) The Carrier violated the Agreement when it failed to allow Mr. C. D., Jacobson holiday pay for the 1992 Thanksgiving Day and the day after holidays (Carrier's File BMW 92-004).
- (2) The Carrier violated the Agreement when it failed to allow Messrs. K. J. Nie, C. R. Rodewald, F. N. Montgomery and B. B. Bellcourt holiday pay for the 1992 Christmas Eve and Christmas Day holidays (Carrier's Files BMW 93-013 and BMW 93-007).
- (3) The Carrier violated the Agreement when it failed to allow Messrs. J. E. Kamm and S. R. Lumsden holiday pay for the 1992 Christmas Eve, Christmas Day and New Year's Eve holidays and the 1993 New Year's Day holiday (Carrier Files BMW 93-008 and BMW 93-010).
- (4) As a consequence of the violation referred to in Part (1) above, Mr. C. D., Jacobsen shall be allowed sixteen (16) hours' pay at his straight time rate for the 1992 Thanksgiving Day and day after holidays.
- (5) As a consequence of the violation referred to in Part (2) above, Messrs. K. J. Nie, C. R. Rodewald, F. N. Montgomery and B. B. Bellcourt shall each be allowed sixteen (16) hours' pay at their respective straight time rates for the 1992 Christmas Eve and Christmas Day holidays.

- (6) As a consequence of the violation referred to in Part (3) above, Messrs. J. E. Kamm and S. R. Lumsden shall each be allowed thirty-two (32) hours' pay at their respective straight time rates for the 1992 Christmas Eve, Christmas Day and New Year's Eve holidays and the 1993 New Year's Day holiday."

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 employee 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.

All of the herein Claimants were "other than regularly assigned employees" at the time of the occurrence of the holidays listed in the Organization's Statement of Claim. Even though each Claimant had compensated service credited to 11 or more of the 30 calendar days immediately preceding the holiday involved, thus satisfying the qualifying tests for other than regularly assigned employees provided in Rule 32 (c), Carrier did not allow holiday pay, because none had at least 6 hours of compensated service credited to the work days immediately preceding and following the holiday, the qualifying test required for regularly assigned employees in Rule 32 (b).

Carrier argues that under the specific language of the Holiday Pay Rule applicable on this property (which the Board notes differs from the standard Non-ops holiday pay provisions resulting from the August 21, 1954 National Agreement, and the several amendments thereto) employees that are other than regularly assigned must not only satisfy the requirements of Rule 32 (c), but the requirements of Rule 32 (b), as well. Carrier stresses that Rule 32 (c) opens with the specific proviso that "Subject to the applicable qualifying requirements in paragraph (b) hereof." Thus, the qualifying requirements of both paragraphs (b) and (c) of Rule 32 are applicable to "other than regularly assigned employees."

The Board agrees with Carrier's interpretation of Rule 32 (b) and (c). It is clear that the language used in the Rule, which is a substantial departure from the language used in the 1954 Non-ops National Agreement, not only requires that other than regularly assigned employees have compensated service on 11 or more of the 30 calendar days preceding the holiday, but also have at least 6 hours of compensated service on the work days preceding and following the holiday. Any other reading of Rule 32 (c) would require that the first eight words of the language of the Rule be ignored.

The requirement that to be eligible for holiday pay an employee must have 6 hours of compensated service on the work days preceding and following the holiday, as contained in Rule 32 (b) is a test of availability. This test replaced other availability tests, and perhaps simplified matters for the Carrier. When the Organization agreed to the language "Subject to the applicable qualifying requirements in paragraph (b) as the opening language to Paragraph (c) it agreed that the 6 hour test of availability would replace previous availability tests applicable for other than regularly assigned employees.

Accordingly, the Rule, as it is now structured, requires that other than regularly assigned employees meet both the tests of Rule 32 (b) and (c) to be eligible for holiday pay. No other conclusion can be fairly read from the language of the text. If the Board were to embrace the interpretation advanced by the Organization, the inclusion of the first eight words of Rule 32 (c) would be rendered meaningless. The end product of the negotiated change would be erased. The opening language present in Rule 32 (c) cannot be ignored. It must be applied as written.

The claims are without merit.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

Form 1
Page 4

Award No. 31135
Docket No. MW-31828
95-3-94-3-122

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.