

Award No. 10175

Docket No. MW-9075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it refused to allow certain hourly rated employes on the St. Louis and East St. Louis Terminal Divisions eight hours' straight time pay for Thanksgiving Day, November 25, 1954;

(2) Each claimant referred to in Part (1) of this claim be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants herein involved were regularly assigned to various hourly rated positions on the Carrier's St. Louis and East St. Louis Terminal Divisions.

On or about November 23, 1954 the Carrier instructed the claimants not to report for work on Friday following Thanksgiving Day, November 25, 1954, but to report at their respective starting time and place on Monday, November 29, 1954.

In complying with the Carrier's instructions, the claimants received compensation credited by the Carrier to Wednesday, November 24, 1954 and to Monday, November 29, 1954.

In August of 1954 the parties consummated an Agreement providing for eight hours' straight time pay for each of the seven designated holidays not worked.

The Carrier has refused to allow the claimants eight hours' pay at their respective straight time rates for Thanksgiving Day, November 25, 1954.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, amended September 1, 1949 and November 1, 1950, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Sections 1 and 3 of Article II of the August 21, 1954 Agreement reads as follows:

1. Holiday pay under the August 21, 1954, Agreement is applicable only to employees who receive compensated service the workday preceding and following the holiday.
2. The unnamed claimants did not receive compensation on the workday immediately following the holiday and were not, therefore, entitled to holiday pay.
3. Existing rules of the applicable agreements were not violated.

It is respectfully submitted that the claims are not supported by the applicable agreement and should be dismissed or denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: On or about November 23, 1954, the Carrier instructed the Claimants not to report for work on the work day immediately following Thanksgiving Day—November 26, 1954. The Claimants did report for work on November 29, 1954.

The Carrier maintained that it has exceeded its budget for the month of November and furloughed the Claimants to reduce operating expenses.

The Carrier gave compensation credit to the Claimants for November 24th and 29th.

The August 21, 1954, Agreement in Article II, Sections 1 and 3, set forth the compensable holidays and the qualifying conditions for holiday pay.

The pertinent sections of Article II read as follows:

"Section.1. Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

"Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays."

"Section 3. An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employe'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.

Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The Organization contends that the Carrier laid off Claimants to avoid paying them for the holiday. The Organization cites a pertinent portion of the Emergency Board's Report—dated May 15, 1954—to the President of the United States, which reads as follows:

"The Board feels that in relation to practice in other industries it would be appropriate for hourly rated non-operating railroad employees to receive straight time compensation for any of the seven holidays falling on any of the work days of their established work week, subject to certain limitations outlined. In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for the employees to maintain their normal take-home pay in weeks during which a holiday occurs. As will be indicated later, the Board proposes continuation of the present arrangements for time and a half for holidays worked. Such time and a half for holidays worked would be in addition to straight time pay for holidays. This will have the effect of take-home pay in excess of normal for those employees who work on holidays, but under the conditions involved is believed by the Board to be justified." (Emphasis ours.)"

The above report is merely of an advisory nature and cannot be substituted for the contractual provisions of the current Agreement.

The Organization also maintains that the Claimants received compensation credit for the work day immediately preceding the holiday and the for the first work day following the holiday. This statement is not supported by the record.

According to the Organization, "the Claimants were ready, willing and available to work on Friday, November 26, 1954, but the Carrier refused to permit the Claimants to do so."

The Carrier contends that:

1. Its actions were proper and not in violation of the Agreement;
2. It gave all Claimants 36 hours notice as required by the Agreement;
3. It laid off the junior men;
4. The services of the Claimants were not needed by operational requirements.

An objective study of the entire Agreement failed to produce any evidence that would prevent the Carrier from furloughing the Claimants on November 26, 1954.

Article II, Section 3, requires that an employee in order to qualify for holiday pay—must receive compensation credit for the workdays immediately preceding and following a holiday. The Claimants did not work nor did they receive compensation credit for November 26, 1954, the work day immediately following the holiday. Consequently, the Claimants failed to meet the contractual qualifications for holiday pay.

Accordingly, we must rule that the Carrier did not violate the Agreement and a denial of the claim is in order.

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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1961.