Award No. 10246
Docket No. MW-9552

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GEORGIA RAILROAD

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow eight (8)hours' pro rata pay for the day observed as Christmas of 1955 and New Year's, 1956, to certain Maintenance of Way employes and, in consequence thereof;

(2) Each regularly assigned hourly rated employe who received compensation from the Carrier which was credited to December 16, 1955 and to January 9, 1956, but who was deprived of the holiday pay referred to in part one (1) of this claim, now be allowed sixteen (16) hours' pay at the pro rata rate of the position to which assigned on such dates;

(3) The individual claimants and the amount due each of them be determined by a joint check of the payroll records of the Carrier in accordance with the principles enunciated in Interpretation No. 1 to Award 1421, Serial No. 28.

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned hourly rated employes. Claimants each received compensation credited by the Carrier to December 16, 1955 and to January 9, 1956, the assigned work days immediately preceding and following the days observed as Christmas of 1955 and New Years of 1956.

Claim as set forth herein was filed, the Carrier declining the claim throughout all stages of handling.

The Agreement in effect between the two parties to this dispute dated December 16, 1944, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

EMPLOYES' POSITION: By Letter Agreement signed at Washington, D. C. on May 20, 1955, the Agreement signed at Chicago, Illinois on August 21, 1954, became operative on this Carrier. Sections 1 and 3 of Article II thereof reads:

of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.

(e) A claim may be filed any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

(f) This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employes they represent.

(g) This agreement is not intended to deny the right of the employes to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier.

(h) This rule shall not apply to requests for leniency."

* * * *

Note that it refers to claims filed by or on behalf of the employe. It makes no provision whatever for unnamed claimants.

Carrier has conclusively shown that the force reductions in question were bona fide and made under the terms of the working agreement; that the holiday pay rule is not applicable for the reasons outlined; that it did not violate the spirit of the letter of May 20, 1955 and that the claims are not valid under the time limit on claims rule. Carrier respectfully requests that the claim be denied.

All data contained herein has been made available or is known to Petitioner.

OPINION OF BOARD: This dispute has arisen between the parties hereto in connection with an alleged violation of the Holiday Pay Rule and the Letter of Agreement dated May 20, 1955.

At the close of work on Friday, December 16, 1955, the Carrier laid off certain Maintenance of Way employes. These men were then directed to return to work on Monday, January 9th.

The Organization contends that these employes should be compensated for the Christmas Day and New Year's Day holidays that occurred while the employes were off duty and that in so doing there was a positive violation of the Holiday Pay Agreement.

The Carrier takes the position that the Agreement in operation clearly shows that the Carrier had a right to reduce the work force and that there is nothing in the facts that would qualify the employes to receive pay under Article II.

There is really but one question before us and that is whether the employes who were regularly assigned hourly rated employes on December 16, 1955 and on January 9, 1956 and earned compensation those dates, but who were furloughed because they had no regular assigned work days between those dates, were entitled to 8 hours holiday pay for Christmas 1955 and New Year's 1956.

We shall pass only on one question raised and that is whether there was a violation of the Holiday Pay Rule and the Letter of Agreement dated May 20, 1955.

Certainly this Board has ruled many times that it is required to take rules as they are written and neither party can in any way expand upon its meaning to arrive at a different meaning than set forth in the Agreement.

It is our opinion that for any employe to be entitled to holiday pay he must be a regularly assigned employe and none of these claimants had that status.

It is evident that there were no regular assigned work days between December 16, 1955 and January 9, 1956. This prevents these employes to actually qualify for Holiday pay under the clear terms of Article II, Section 1. This was upheld in Awards 7430, 7978, 8053, 9117 and 10118. See also Award 10175.

We must go to the record to find that there is an abundance of evidence that such jobs were abolished due to certain existing circumstances, see pages 6 and 7 of the Record, also page 15.

The burden is always on the claimant to prove all essential elements of the claim and mere assertions and conclusions do not substantiate a claim. The Organization has failed to prove there was a definite and positive violation of the Holiday Rule.

Certainly it follows that if the Holiday Rule was clear and concise on the position of the Organization, there would have been no need for the agreement of May 20, 1955. We cannot feel this letter either alters the rights of the Carrier to act as it did.

It is therefore the Opinion of this Board that there was not a violation of either the Holiday Pay Rule or the Letter of Agreement dated May 20, 1955.

Since there was no violation as complained of by the Organization the Claims must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1961.