Award No. 10284
Docket No. MW-9468

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Nashville, Chattanooga & St. Louis District)

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 holiday pay for the day observed as Christmas, December 26, 1955, and New Year's Day, January 2, 1956, to certain Maintenance of Way employes, in compliance with the provisions of Sections 1 and 3 of Article II, of the August 21, 1954 Agreement and, in consequence thereof;

(2) Each of the following named employes now be allowed sixteen (16) hours' pay at the pro rata rate of the respective position to which assigned and working on December 23, 1955, and January 3, 1956:

H. B. Jackson	James Simmons	H. M. Counts
J. Anthony	Geo. E. Battle	H. W. Fulton
Lee Jordan	C. C. Daniel	Hamp Dotson
Rubin Blythe	H. W. Morgan	F. P. Rogers
John Oakley	G. M. Minor	C. D. Cox
J. B. Singleton	L. B. Jones	H. C. Langford
Frank Price	J. F. Finney	J. M. Spence
Everett Locka	G. L. Morgan	W. L. Earls
Lawrence Love	E. L. Ricketts	R. S. Cassity
Will Joyner	G. R. Whitfield	D. W. Maxwell

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned hourly and/or daily rated employes, and each received compensation credited by the Carrier to December 23, 1955 and to January 3, 1956, the Carrier assigned work days immediately preceding and following Christmas of 1955, and New Years of 1956.

if Rule 18(h) of the Agreement was not applied this year and I respectfully request that you give serious consideration to setting aside the provisions of this rule for the lay-off period, December 22, 1956 — January 1, 1957.

Please advise.

Yours very truly,

(s) W. P. Gattis
General Chairman."

It will be noted the General Chairman stated "There are several reasons that I made this request . . .", one of which was the recognition of the fact that employes laid off during the Christmas holiday season would not qualify for pro rata holiday pay under Article II of the August 21, 1954 National Agreement.

The Employes' notice of August 10, 1955, of their desire to eliminate Rule 18(h) and their request of September 24, 1956, that the provisions of Rule 18(h) be set aside and not applied during the Christmas holiday period December 22, 1956 — January 1, 1957, conclusively shows that in progressing the instant claims to the Third Division they are now attempting to obtain by administrative fiat something which they have been unable to obtain by negotiation.

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Carrier submits, in view of the foregoing facts, there is no basis for the Employes' claim, contractual or otherwise, for which reason same should be declined.

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimants in this case, normally assigned to work Monday through Friday on extra and B & B gangs on the Chattanooga Division, were laid off at close of business Friday, December 23, 1955. They were not accorded displacement rights, but were instructed to return to duty on Tuesday, January 3, 1956. This action was taken in accordance with Rule 18(h) which has been in the parties' Agreements since 1940. This Rule provides in relevant part:

> "If desired by The Management employees may be laid off a few days during Christmas holidays, which may include December 22nd to January 1st (or the day observed as New Year's day), inclusive . . . Employees so laid off shall not have displacement rights."

Christmas Day 1955, a contractual holiday, fell on Sunday and was observed on Monday, December 26. New Year's Day 1956, also a contractual holiday, was observed on Monday, January 2.

Under Article I, Section 3 of The Agreement an employe qualifies for holiday pay (eight hours' pay at the pro rata hourly rate of the position to which assigned) "if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday." Moreover, "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."

The Carrier denied Christmas holiday pay to the claimants since they did not work on Tuesday, December 27, the "workday immediately following" the holiday. The claimants were also denied New Year's holiday pay because they did not work on Friday, December 30, the "workday immediately preceding" that holiday.

In claiming eight hours' pay for each holiday, the Brotherhood argues in substance:

1. Since Management eliminated as workdays all days between Friday, December 23 and Tuesday, January 3, under Article I, Section 3, these days cannot be counted. Thus, the contractual workday "immediately preceding" the holidays was Friday, December 23 and the contractual workday "immediately following" the holidays was January 3. Moreover, it is not proper to count December 27-30 as workdays since the claimants were denied work on those days due to the Carrier's exercise of discretionary rights contained in Rule 18(h) and an employe should not be denied pay for failure to work on days he is not scheduled to work.

2. The Carrier has relinquished its right to deny holiday pay under the circumstances here involved, as evidence by its May 20, 1955 letter to Chairman G. E. Leighty of the Employee's National Conference Committee. This letter stated, in part:

> "A question was raised, in our recent deliberation, relative to the application of Article II of the agreement dated August 21, 1954, by and between the carriers represented by the Eastern, Western and Southeastern Carrier's Conference Committees and the employee of such carriers represented by the railway labor organizations signatory thereto through the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organizations.
>
> As you know, we have been following the agreement reflected in the aforementioned Article II since October 1, 1954. On our lines there have not been any indiscriminate reductions in force for the sole purpose of defeating holiday pay and the occurence of holidays will not be used as a consideration in the timing of lay-offs or furloughs so as to deny employes the opportunity to qualify for holiday pay."

By this letter, according to the Brotherhood, the Carrier conceded it could not invoke Rule 18(h) so as to deny employes the opportunity to qualify for holiday pay — which is exactly what happened to the claimants in this case.

In our judgment, the Brotherhood's interpretation of Article II, Section 3 is strained. It rests, essentially, on the proposition that the parties meant "workdays" (when referring to the qualifying days preceding and following a holiday) to cover only the days on which an employe was actually scheduled

for work. Were that the case, the Brotherhood's claim would be justified since (1) The Claimants did perform work on December 23 and January 3, and (2) These days were their scheduled days immediately before and after Christmas and New Years'.

The Brotherhood suggests that a dictionary definition of "workday" be applied, namely, a day on which work is performed. Yet there is no persuasive evidence that the parties had such definition in mind. More likely, in our opinion, they had in mind the distinction between workdays and rest days and were separating all days into one or the other category. Evidence of this is found in the second sentence of Section 3 which states: "If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the workday immediately following."

Additionally, if the Brotherhood is correct, would there have been a need for the May 20, 1955 Letter since, under the theory espoused, an employe would qualify for holiday pay even though he was laid off? Under such circumstances, what would be the purpose of referring to the "timing of layoffs" in connection with denying men the opportunity to qualify for holiday pay? It is not unreasonable to assume that the parties must have recognized that, without additional provisions, persons laid off on the day "immediately preceding and following" workdays would be denied holiday pay.

It is true, as the Brotherhood points out, that qualifying provisions such as Article II, Section 3's "immediately preceding and following" clause, normally are designed to discourage employes from stretching single unworked holidays into extended absences. And the claimants here were obviously not abusing the holiday section. Nevertheless, we must base our decision on the contract as written, and it is plain that no exceptions to the requirement that "compensation paid by the Carrier" be credited on the two days in question, for each holiday, have been provided.

Accordingly, we must find that the grievants did not qualify, under I(3), for holiday pay since they did not work on December 27, the workday following Christmas, or on December 30, the workday preceding New Year's.

What, then, of the Carrier's May 20, 1955 letter? Did this foreclose Management from using Rule 18(h) and denying holiday pay? We think not.

There is not full agreement regarding the origin of this Letter which was requested by the Organizations during 1955 negotiations. The Carrier states this request was based on a contention that some (not all) Carriers had been guilty of timing layoffs for the sole purpose of avoiding payments of holiday pay. The Brotherhood, on the other hand, contends that each affected Southeastern Carrier had a practice of laying off men between Christmas and New Year's, and it was the Organization's desire to eliminate this practice insofar as it resulted in depriving employes of holiday pay.

Since there is no agreement on what precisely transpired during negotiations, we must examine the written documents which represent the parties' actual agreements. (We have no evidence on whether a Rule similar to Rule 18(a) existed in other Carrier Agreements, nor do we know how the 1955 letter agreement has been applied elsewhere.)

In a stipulation dated May 9, 1955 the parties specified:

"(3) In connection with Article II of said agreement of August 21st, the Carriers shall furnish to the organizations a signed letter stating that the occurrence of holidays will not be used as a consideration in the timing of lay-offs or furloughs so as to deny employees the opportunity to qualify for holiday pay."

The May 20, 1955 letter was written in compliance with this stipulation. What does it mean?

Even though this Letter Agreement was conceived during national negotiations, it seems likely, in our opinion, that had the parties intended to completely bar a practice which had previously existed they could have simply and clearly specified that no employe affected by a Rule 18(h) (or similar) layoff would lose holiday pay. But this was not what they did. Instead, they used several phrases which we must carefully evaluate in determining the precise nature of the parties' understanding.

First, the Carrier states in the Letter that there have been no "indiscriminate reductions in force for the sole purpose of defeating holiday pay." While this is a self-serving assertion not required by the basic Agreement, it seems fair to assume that Management meant that in the future, too, it would not engage in any "indiscriminate reductions" whose "sole purpose" is to prevent men from receiving holiday pay.

Second, the Carrier promises in the Letter that the occurrence of holidays "will not be used as a consideration in the timing of lay-offs or furloughs so as to deny employes the opportunity to qualify for holiday pay." In other words, Management agrees it will not base its furlough or layoff decisions on the fact that holiday pay might or might not be earned. Or, to put it another way, the Carrier would be in violation of this Letter Agreement if it scheduled a lay-off at a particular time, using as a consideration for its actions the fact that, by so doing, it could avoid the necessity of paying holiday pay.

In terms of the case at hand, there is no convincing evidence, in our judgment, that the Carrier violated either of these commitments. We are aware of no "indiscriminate" reductions in force. Moreover, there is no evidence that Management's motivation was to deny certain men holiday pay. Rather, it acted, as it had repeatedly acted in the past, to furlough a limited number of men in specific away-from-home jobs which, experience had demonstrated, were difficult to keep filled during the holiday week. Significantly, Management, for many years, had laid off certain groups of men during this holiday season, long before the existence of a holiday pay clause. (Its right to do this, under Rule 18(h), is not questioned.) There is no reason to assume, therefore, that the Carrier's December 1955 layoff decision was based on any different considerations than those used in preceding years.

Under all the circumstances, then, it is our conclusion that the claim 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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1961.