Award No. 10287
Docket No. MW-9553

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTH GEORGIA RAILWAY COMPANY
LIVE OAK, PERRY & GULF RAILROAD COMPANY

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

(1) The Carriers violated the effective Agreement when they failed and refused to allow eight (8) hours' holiday pay for Decoration Day (May 30, 1956) to hourly rated employes and, in consequence thereof;

(2) Each regularly assigned hourly rated employe who received compensation paid by the Carriers which was credited to May 29, 1956 and June 1, 1956, but who was "deprived of the holiday pay referred to in part one (1) of this claim, now be allowed eight (8) hours' pay at the pro rata rate of the position to which assigned on such dates."

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned hourly rated employes, and are regularly assigned to work on Mondays through Fridays.

Under date of May 29, 1956, the Carriers issued Bulletin No. 56, reading:

"LIVE OAK, PERRY & GULF RAILROAD COMPANY
THE SOUTH GEORGIA RAILWAY
BULLETIN NO. 56

Perry, Florida
May 29, 1956

NO ROADWAY FORCES WILL WORK ON THE LOP&G OR SOUTH GEORGIA ON MAY 30TH OR MAY 31ST, BUT WILL RESUME NORMAL WORK ON JUNE 1ST.

/s/ J. H. Kansinger
J. H. Kansinger,
General Manager"

hourly rated employes, (2) they were **not** on that day regularly assigned to a position, (3) May 30 did **not** fall on a work day of the work week of any individual employe, and (4) compensation paid by the Carrier to such employe while credited to the work day immediately preceding May 30, namely, May 29, was **not** credited to the day immediately following such holiday, namely, May 31.

The conclusions is therefore inescapable that the Carriers did **not** violate the effective Agreement when they refused to allow eight hours' holiday pay for Decoration Day, May 30, 1956, to hourly rated employes who were cut off or laid off in a force reduction effective at quitting time on May 29, 1956, and that each regularly assigned hourly rated employe here claimant is **not** contractually entitled to receive pay for eight hours at his regular straight time rate of pay.

This conclusion is supported, in principle, by prior Board awards. For example, in Second Division Award No. 2299, Referee Carter, involving claim on behalf of an unassigned man for holiday pay under a paid holiday rule identical in principle and almost the same language to the one here to be interpreted, the Board denied the claim by holding that:

> " * * *: While it is true that Claimant became the owner of a regular assignment on June 8, 1955, he was not the owner of a regular assignment on May 30, 1955, and consequently he was not a regular assigned employe on that day within the meaning of Section 1, Article II.
>
> The following awards sustain this conclusion: Awards 2052, 2169, 2170, 2171, 2172, Second Division; Awards 7430, 7431, 7432, Third Division."

Also, see Second Division Award No. 2300, Referee Carter, denying a similar claim because claimant was not, on the involved holiday, a regularly assigned employe, or the owner, on such holiday, of a regularly assigned position.

Claim not being supported by the effective Agreement, the Board cannot make a sustaining award.

All evidence here submitted is known to employe representatives.

Carriers not having seen the Brotherhood's submission reserve the right after having done so to make appropriate response thereto.

OPINION OF BOARD: Claim is made that the Carrier violated the Agreement when it refused to pay holiday pay for Decoration Day May 30, 1956 to hourly rated Employes.

Claimants involved in this dispute are hourly rated roadway Employes with assigned workdays Monday through Friday with Friday and Saturday as rest days.

Decoration day May 30, 1956 fell on Wednesday.

Prior to May 30th written notice was given to Supervisory Personnel and verbal notice to the Claimants that no roadway forces would work on

May 30th or 31st and normal work would resume on June 1st. No work was performed on May 30th or 31st and there was no compensation paid by Carrier credited to May 31st the workday immediately following the holiday.

The issue in dispute is whether Claimants are entitled to holiday pay provided for in Rule 25 of the Agreement between the parties.

Rule 25 reads as follows:

"(a) Employees assigned, notified or called to work on the following legal holidays, namely, New Year's, Washington's Birthday, Decoration Day (May 30), Fourth of July, Labor Day, National Thanksgiving Day and Christmas (provided when any of these holidays fall on Sunday the day observed by the State, Nation or by proclamation shall be considered the holiday), will be paid for work performed or time held on duty at the rate of time and one-half, with a minimum of two (2) hours for two (2) hours' work or less.

"(b) Each regularly assigned hourly rated employee shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which assigned for each of the holidays named in Section (a) of this Rule 25 when such holiday falls on a work day of the work week of the individual employee.

"(c) An employee shall qualify for the holiday pay provided in Section (b) of this Rule 25 if compensation paid by the Carrier is credited to the work days immediately preceding and following such holiday. . . ."

The rule sets out definite requirements as a condition precedent to entitle an Employe to holiday pay. One of the requirements is that compensation paid by the Carrier is credited to the work days immediately proceeding and following the holidays. It is over this provision that the parties are in disagreement.

The Organization claims that the positions of the Claimants were only suspended or blanked on the day in question and that there was no force reduction or abolishment of the job.

The Organization also contends that the Claimants received compensation for the work day immediately preceding the holiday and for the first work day following the holiday.

The Carrier contends that as Claimants had no compensation credited to Thursday, May 31st the work day immediately following the holiday they did not qualify for holiday payment as required under Rule 25(c).

It is our opinion that the Carrier had the right to and did furlough the Claimants on May 30th and 31st pursuant to Rule 21(b) which reads as follows:

"Nothing in this Agreement shall be construed to guarantee any employee work or pay for any specified number of hours or days, nor shall anything in this Agreement be construed to prevent the abolishment of positions or assignments at any time."

From our examination of the record it is clear that the Claimants had no compensation credited to May 31st the work day immediately following the May 30th holiday.

In Award 10175 (Referee Daly) the facts were similar to those involved in the present dispute and the Board there held that the Claimants did not meet the contractual qualifications for holiday pay as specified in the rule and that the Carrier did not violate the Agreement.

Even though there may be equity in the Claimants positions there is no power in this Board to change the Agreement.

It is our opinion that the Claimants failed to meet the requirements of the Holiday Rule and we must therefore deny the claim.

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

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 20th day of December 1961.