

Award No. 10512
Docket No. MW-9718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY

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 certain of its Maintenance of Way employees eight hours' straight time pay for Thanksgiving Day, November 24, 1955.

(2) Each of the claimants be allowed eight hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

NOTE: The claimants have been identified in a letter dated May 16, 1956 addressed to Mr. J. F. Beaver, Assistant Chief Engineer by General Chairman G. W. Ball and confirmed in a letter dated June 22, 1956 addressed to General Chairman Ball by Mr. Beaver.

EMPLOYEES' STATEMENT OF FACTS: The Claimants referred to in the Statement of Claim were regularly assigned to various hourly rated positions in the Maintenance of Way and Structures Department. On or about November 23, 1955 the Claimants were notified that they were laid off, effective with the close of the work period on Wednesday, November 23, 1955. On or about November 26, 1955 each of the Claimants was notified to report for service on his respective position and gang at the beginning of the work period on Monday, November 28, 1955.

In complying with the Carrier's instructions, each of the Claimants received compensation credited by the Carrier to Wednesday, November 23, 1955, and to Monday, November 28, 1955.

In August of 1954 the parties consummated an agreement providing for eight hours' straight time pay for each of the seven designated holidays, which includes Thanksgiving Day, not worked. The Carrier has refused to allow

The conclusion is therefore inescapable that the Carrier did **not** violate the effective Agreements when it refused to allow eight hours' holiday pay for Thanksgiving Day, Thursday, November 24, 1955, to claimants and others who were cut off or laid off in a force reduction effective at quitting time on Wednesday, November 23, 1955, and that each employee here claimant is **not** contractually entitled to receive pay for eight hours as claimed.

This conclusion is supported in principle by prior Board decisions. For example, 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 written in almost the same language as the one here to be interpreted, 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 employee 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 employee, or the owner, on such holiday, of a regularly assigned position.

In addition to alleging violation of the paid holiday rule, the Brotherhood charged that Rule 44 was also violated. This rule simply provides that gangs will not be laid off for short periods when proper reduction of expense can be accomplished by first laying off junior men. It recognizes the Carrier's right to lay off employees for short periods, but there was no violation of this rule because the proper reduction of expenses could not be accomplished by first laying off junior men, thus necessitating cutting off the entire force.

Rule 49 is of significance in that it specifically states that no compensation will be allowed for work not performed. The claim which the Brotherhood is here attempting to assert is for work not performed.

Furthermore, Item 24 of the appendix, quoted above, recognizes management's unrestricted right to abolish positions or assignments at any time.

Claim not being supported by any provision contained within the four corners of the effective Agreements, and being unsupported by the principles of prior Board awards, should be denied.

All evidence here submitted is known to the employees' representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right, after doing so, to make appropriate response thereto.

OPINION OF BOARD: On or about November 23, 1955, the Carrier notified the Claimants that they were laid off effective with the close of the work period on Wednesday, November 23, 1955. On or about November 26, 1955, the Claimants were notified to report for work in their respective positions and in their gang at the beginning of the work period on Monday,

November 28, 1955. The Claimants worked Monday, November 21, Tuesday, November 22 and Wednesday, November 23. They did not work the balance of that week, but returned to their regular assignments on Monday, November 28. The claim is for holiday pay for Thanksgiving Day on Thursday, November 24, 1955.

Both parties cited Sections 1 and 3 of Article II of the Chicago Agreement dated August 21, 1954 which 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	

"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."

In its essential aspects, this claim is not distinguishable from the claims which led to our Awards 10175 (Daly) and 10287 (Wilson). We see no reason for reaching a different conclusion.

Even though there may be equity in the Claimants' position, this Board has no power to change the Agreement which required the employes to receive compensation credit for November 25, 1955, the day immediately following the holiday. Since the Claimants failed to qualify for holiday pay, we hold that the claim is without merit.

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

That the Carrier did not violate the Agreement.

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AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1962.