Award No. 10601
Docket No. MW-9790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 agreement when it failed and refused to allow Messrs. L. A. Spraberry, C. R. Anderson, R. C. Reed and M. L. Allday eight hours' pro-rate pay (Holiday pay) for December 26, 1955 and for January 2, 1956.

(2) Each of the claimants named in Part (1) of this claim be allowed sixteen hours' pay at their respective pro-rata rates account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants, Messrs. L. A. Spraberry, C. R. Anderson, R. C. Reed, and M. L. Allday, were regularly assigned to hourly rated positions on Bridge and Building Gang No. 304. On December 23, 1955, the Carrier instructed the Claimants not to report for work until Tuesday, January 3, 1956.

In complying with the Carrier's instruction, each of the Claimants received compensation credited by the Carrier to Friday, December 23, 1955, and to Tuesday, January 3, 1956. In August of 1954 the parties consummated an Agreement providing for eight hours' straight time pay for each of the seven designated holidays, which include Christmas and New Year's Day, not worked. The Carrier has refused to allow the Claimants eight hours pay at their respective straight time rates for December 26, 1955 and for January 2, 1956.

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

POSITION OF EMPLOYES: Rule 34(a) reads as follows:

"(a) Employes who are required to work on the following holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas

and had no service to perform on the workdays immediately before and after the holiday.

The inherent difficulty of the Employes' position is amply demonstrated by the fact that Claimant M. L. Allday last performed service on November 18, 1955, and was furloughed due to a force reduction: he was recalled on January 3, 1956. The Employes, in defiance of the explicit language of the Agreement, claim that he should be given holiday pay for December 26, 1955! The absurdity of this position is readily apparent.

To sustain the Employes' position in this case would mean overruling the explicit, unequivocal language of the August 21, 1954 Agreement; in effect it would mean that the Board would be creating a rule to cover such a situation. This Board has repeatedly held that it lacks the power to make rules. A typical example of this holding is the following from Third Division Award 4763:

> "This Board is without authority to revise or expand the Agreement between the parties, but must construe and apply agreements as the parties enter into them, and it has no authority to change them to avoid inequitable results. Awards 1248, 2612, 2765, 4259. This Agreement does not restrict the assignment of the employes as set forth in this claim, and it will be denied."

The Carrier has demonstrated that:

1. The August 21, 1954 Agreement specifies that employes must have compensation credited to them on the workday before and the workday after a holiday, in order to qualify for holiday pay.

2. Because they were in a furloughed status, the employes could not have compensation credited to them on the workdays immediately preceding and following the holiday.

3. The claimants, who did not have compensation on the first workday following December 26, 1955 (Christmas), and on the workday preceding January 2, 1956 (New Year's Day), are, thefore, not entitled to holiday pay.

Inasmuch as these claims are not supported by the applicable agreements, and no proof can be offered that they are, this claim should be dismissed or denied.

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

OPINION OF BOARD: Christmas, December 25, 1955 and New Year's Day, January 1, 1956 fell on Sundays. Under the terms of the Agreement they were observed as holidays on Monday, December 26, 1955, and on Monday, January 2, 1956 respectively. Employes on the Mississippi Division Bridge and Building Gangs 300, 302, 303, 304 and 305 were given written notice that the gangs were laid off beginning Friday, December 23, 1955, and they all were instructed to return at 7:00 A. M. on Tuesday, January 3, 1956. The record does not show when such notice was given, but the Organization nowhere on the property claimed that such lay off notice was untimely or improper. Neither does the Organization make such an allegation in the record. Rule 7(b) provides:

"When forces are to be reduced not less than thirty-six (36) hours notice shall be given to regularly assigned employes affected."

There is no allegation nor is there any evidence that such notice was not given and we must assume that it was.

If the facts were confined solely to those stated above we would be obliged to follow our rulings in Award 10175 (Daly) and 10287 (Wilson) which sustained the Carrier's right to furlough employes prior to holidays. Regardless of the equities, we have no right to overrule an award unless the conclusions and the findings are palpably wrong. That is not the case in Awards 10175 and 10287.

The record further shows, however, that the Carrier advised the employes that if they desired to work during the holiday week they "would be permitted to do so." Whether or not it had been a practice to furlough such employes so that they could visit with their families during the holidays is immaterial. The fact is that those employes who requested the right to work between December 24, 1955, and January 2, 1956, did work, and received holiday pay for Christmas and New Year's Day.

About 42 men were involved in the layoff. Three requested the right to work and did work. There is no evidence that any claims were presented in behalf of 35 employes. There is also no clear and convincing evidence that the four Claimants protested the layoff and requested the right to work. The only evidence relied upon by the Organization is a letter dated February 8, 1957, addressed to Mr. W. C. Hull, General Chairman, from Mr. H. G. Atwood, Vice Chairman, which stated that Mr. Hull's investigations showed that the Claimants "made request through spakeman, Spraberry, to work to their foreman, Mr. Hughs, and were out right refused in no uncertain words that they would go home and not work as he had already notified the superior that he would lay them off." This letter, is communication between officers of the Organization, is self serving and can not be accepted as evidence that the Claimants requested the right to work. There is no direct evidence on the subject by any of the Claimants. Claimant Allday was not even on the payroll on December 23, 1955. He was furloughed on November 18, 1955, and remained in that position until January 3, 1956.

On the basis of the Carrier's allegations, the Claimants, Anderson, Reed and Spraberry would have been entitled to holiday pay for December 26, 1955 and January 2, 1956, and they requested the right to work during the layoff period and had the Carrier refused to permit them to work. They have not, however, presented proof of that fact, nor have they met the burden of proof requirements. Mere assertions by the Claimants' Representatives can not be accepted as proof. See Awards 8065 (McCoy), 6359 (McMahon), 9932 (Weston), 9788 (Fleming), 9674 (Johnson), and 9609 (Rose). In Award 9674 this Board said that "self-serving declarations and general statements (are) of no real probative value."

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May, 1962.