

Award No. 10757

Docket No. MW-9717

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ALABAMA GREAT SOUTHERN 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 employes 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.

EMPLOYES' 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 each of the Claimants eight hours' pay at his respective straight time rate for Thanksgiving Day, November 25, 1955.

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 do other than make a denial award.

All evidence here submitted is known to employe representatives.

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

OPINION OF BOARD: Both parties agree that in Sections 1 and 3 of Article II of the August 21, 1954 Agreement the pertinent sections of Article II 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	

"Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays.

"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.

Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The issue in dispute is whether Claimants are entitled to the holiday pay provided for in Article II of the 1954 Agreement.

Under the above quoted sections of the Agreement three requirements are necessary.

1. The employe must be a regularly assigned hourly or daily rated employe.
2. The holiday must fall on a workday of his (the individual employe's) workweek.
3. The employe must have compensation paid by the Carrier credited to his workdays immediately preceding and following the holiday.

In our case the Claimants were notified by the Carrier prior to November 23, that they would be laid off effective Wednesday, November, 23, 1955. Thursday, November 24, 1955, was Thanksgiving Day and of course a holiday. On November 26, Claimants were recalled to service effective Monday, November 28, 1955.

There is equity in the Claimants' position but this Board has no power to change the Agreement between the parties.

Similar factual situations have been presented to this Board. It is not possible to distinguish the claims which led to our Awards 10175 (Daly), 10287 (Wilson) and 10512 (Dolnick). We see no reason for reaching a different conclusion. Since the Claimants failed to qualify for the holiday pay under the terms of the Agreement, 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 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 6th day of August 1962.