Award No. 14730
Docket No. SG-13486

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company:

That each and every T. & S. employe named below and coming within the Classification set forth in Article 1 of the Agreement, who were furloughed, effective with the close of business on August 31, 1960, or at the end of their tour of duty on September 1, 1960, be paid eight (8) hours at the pro rata hourly rate of pay, or the equivalent hourly rate where a monthly-rated employe is concerned, of the position of which compensation last accrued to them, for Labor Day, September 5, 1960, in accordance with Article II of the Agreement of August 21, 1954, as amended by Article III of the Agreement of August 19, 1960.

M. E. Anderson	B. T. Ervin, Jr.	E. G. Smith, Jr.
C. Anthony, Jr.	C. H. Foss	A. R. Schipski
Alfred J. Baylies	J. J. Foran	Harold Shackleton
Francis J. Bazanka	William Gottiaux	R. E. Schledorn
Stephen Bahulya	J. J. Gnag, Jr.	A. M. Santawasso
Peter Barbon	J. F. Johnson	W. C. Smith
Donald W. Bleasdale	W. H. Kennedy	J. T. Steinmetz
Chester W. Bodley	Clarence McCoy	G. A. Starkey
R. C. Crampton	J. F. Malloy	Cyril Tyler
T. E. Cope	J. H. Monshaw	D. L. Thackera
R. N. Crawford	George Nicholson, Jr.	J. H. Van Sant
T. P. Delozier	Richard Oliver	J. S. Van Sant
M. H. Ely, Jr.	E. S. Prickett	Edwin M. Vogler
W. R. Edwards	F. E. Renault	O. B. Wright
H. E. Elmer	A. T. Smith	J. R. Mayer

[Carrier's File: System Docket No. 195-New York Region Case 27/60]

when the strike is terminated, the employes will return to their former positions without the formality of complying with the provisions of the Schedule Agreement regarding advertisement and award.

It is also understood that senior employes exercising displacement rights to positions continued in existence will likewise be returned to their former positions."

Accordingly, the forty-five named Claimants were laid off and did not work from September 1 to September 12, 1960. Thereafter, they returned to their former positions in accord with the above understanding.

In a letter dated October 26, 1960, the Local Chairman, Brotherhood of Railroad Signalmen, presented a claim to the Supervisor, C. & S., in substantially the same form as that quoted at the beginning of this Submission. The Supervisor denied the claim in a letter dated November 17, 1960. The claim was then handled successively with and denied by the Superintendent of Personnel and the Manager, Labor Relations, the latter being the highest officer of the Carrier designated to handle labor disputes with the employes on the property. In the course of this handling a Joint Submission was entered into by the Superintendent of Personnel and the Local Chairman, a copy of which is attached hereto marked Carrier's Exhibit "A". A copy of the Manager's letter of July 20, 1961, covering his denial of the claim is attached and marked Exhibit "B".

So far as the Carrier is able to anticipate the basis of the Employes' claim, the sole question to be decided by your Honorable Board is whether under the circumstances involved the forty-five named Claimants are entitled to be compensated eight (8) hours at their respective pro rata hourly rates for the Labor Day holiday, September 5, 1960.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier ceased operations from the close of business on August 31, 1960 to September 12, 1960 because of a strike of its Shop Craft employes who were not covered by the Signalmen's Agreement, and furloughed T. & S. employes for the duration of the strike. Claim is made for T. & S. employes (listed by name in the claim) for 8 hours pro rata pay for Labor Day, September 5, 1960 in accordance with Article II of the August 21, 1954 Agreement, as amended by Article III of the August 19, 1960 Agreement.

The stipulated facts and positions of the parties are as follows:

"**JOINT STATEMENT OF AGREED UPON FACTS:** All Claimants named on the list attached to the original claim were regularly assigned hourly or monthly rated employes and held regular assigned positions, which positions were abolished effective with the close of business on or at the end of the tour of duty on August 31, 1960, due to a strike of TWU and System Federation Shop Employes.

"The strike was terminated on September 12, 1960, and all the employes named in the claim were placed back on the positions they held prior to the strike, in accordance with the Understanding had

between the Manager of Labor Relations, P.R.R., and the General Chairman, B. of R. S.

"Claimants did not perform service during period from September 1, to 12, 1960, and they were not allowed pay for the Labor Day Holiday, September 5, 1960.

"POSITION OF EMPLOYES: It is the position of the Employes that each and every T. & S. employe named on the list attached to the original claim is entitled to be paid eight (8) hours at their pro rata hourly rate of pay, or the equivalent hourly rate where a monthly rated employe is concerned, of the position on which compensation last accrued to them, for Labor Day, September 5, 1960, in accordance with Article II of the Agreement of August 21, 1954, as amended by Article III of the Agreement of August 19, 1960.

"All Claimants were paid compensation for service by the Carrier on eleven (11) days or more of the thirty (30) calendar days immediately preceding the holiday.

"All Claimants had a seniority date of more than sixty (60) calendar days of active service preceding the holiday, and all claimants were regularly assigned employes and the holiday did fall on a 'work day' of their 'work week.'

"None of the Claimants were on strike, but were locked out of their respective regular assignments by the Carrier without regards to the Claimant's availability, readiness and willingness to work.

"As evidenced by the Joint Statement of Agreed-Upon-Facts contained herein, the Claimants are to be considered in the category of 'regular assigned employes' because of the Understanding between the General Chairman, B. of R. S., and the Manager of Labor Relations, P. R. R., dated August 31, 1960 at Philadelphia, Pa., wherein it was understood that —

> " '* * * to avoid all possible delay and confusion incident to the recall when the strike is terminated, the employes will return to their former positions without the formality of complying with the provisions of the Schedule Agreement regarding advertising and award.'

The Understanding also made it clear that —

> " '* * * the senior employes exercising displacement rights to a position continued in existence will likewise be returned to their former positions.'

"The above quotes from the Understanding placed the Claimants on temporary leave due to the strike. The strike was terminated on September 12, 1960 and the named Claimants were placed on their former positions in accordance with the Understanding mentioned above.

"In denying this claim, the Carrier was not cognizant of the fact that the Agreement of August 19, 1960, liberalized the qualifying requirements applicable to regularly assigned employes, as provided for in Article III, Section 3 of the aforementioned Agreement.

"**POSITION OF COMPANY:** The employes contend that the Claimants in this case were regularly assigned employes on Labor Day, September 5, 1960, and are, therefore, entitled to holiday pay for that day in accordance with the provisions of the August 19, 1960 Agreement. This is a wholly erroneous contention. The Claimants in this case ceased to be regularly assigned employes on August 31, 1960, the date on which their positions were abolished.

"Article III, Section 1 of the August 19, 1960 Agreement reads, in part, as follows:

> " '**Section 1.** Subject to the qualifying requirements applicable to regularly assigned employes contained in Section 3 hereof, each regularly assigned hourly and daily rated employe shall receive eight (8) 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** (emphasis supplied) * * *.'

"Inasmuch as the positions of the Claimants in this case had been abolished, none of the Claimants possessed a workweek, and, therefore, the holiday did not fall on a 'workday of the workweek of the individual employe', as provided in the aforesaid Article III, Section 1 of the August 19, 1960 Agreement.

"The Employes attempt to support their claim by referring to the August 31, 1960 Understanding between the Manager-Labor Relations and the General Chairman. The intent of this Understanding was to eliminate readvertisement of positions after the termination of the strike in order that the employes whose positions had been abolished as a result of the strike would be able to return to work as promptly as possible. This Understanding did not, either explicitly or by complication, give to the Claimants, the status of 'regularly assigned employes'.

"Throughout their position, the Employes maintain that the Claimants were regularly assigned employes. In support of this contention, they make the following statements, both of which, under the terms of the August 19, 1960 Agreement, have application only **to other than regularly assigned employes:**

"(1) 'All Claimants were paid compensation for services by the Carrier on eleven (11) days or more of the thirty (30) calendar days immediately preceding the holiday.'

"(2) 'All Claimants had a seniority date of more than sixty (60) calendar days of active service preceding the holiday.'

"It is the position of the Company that (1) the Claimants were not regularly assigned employes and (2) that the Claimants are not entitled to the holiday pay claimed."

The parties were in dispute on the question of whether the Claimants were "regularly assigned" or "other than regularly assigned" employes. We hold the Claimants were "other than regularly assigned" employes and find support for this conclusion in Award 14515 (Brown) wherein the Board states:

"Due to the manner in which these employes were furloughed and notified to resume work on their assignments on expiration of the furlough or lay-off period, the parties are in dispute on the issue of whether Claimants were 'regularly assigned' or 'other than regularly assigned' as of July 4 and September 5, 1960. Since there is no disagreement about the fact that these employes were laid off or furloughed at Carrier's direction and that the lay-off period extended beyond the holiday, we hold that Claimants were 'other than regularly assigned'. * * *"

In order to be entitled to Holiday Pay, the Claimants must satisfy the requirements of Article III of the August 19, 1960 Agreement relating to "other than regularly assigned employes".

The record reveals that the Claimants satisfy the requirements of Article III, Section 1 in that:

1. Each Claimant had compensation paid him for 11 or more of the 30 calendar days immediately preceding the holiday and

2. Each Claimant had a seniority date for at least 60 days preceding the holiday.

The applicable provision in Article III, Section 3 which relates to the Claimants is sub-section (ii) as follows:

"All others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

* * * * *

"(ii) Such employee is available for service.

"**Note:** 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

Carrier contends that Claimants were not available for service during the period that operations were suspended due to strike.

The record reveals that the Claimants did not lay off of their own accord nor did they fail to respond to a call. Under these circumstances Claimants satisfied the requirements of Article III, Section 1, Subsection (ii) and we hold therefore that Claimants were "available for service". The Board has so held on numerous occasions and we find those awards must be followed. See Awards 14364, 14365, 14390, 14431, 14515, 14516, 14517, 14518, 14519, 14520, 14521, 14522, 14523, 14524, 14625, 14626, 14635, 14675.

Carrier cited Award 4494 at the appearance of the Parties before the Referee and suggested that Claimants were not available for service because they would not have crossed a picket line set up by the striking employes. We find this issue was not raised on the property. The Board has repeatedly held that matters not raised on the property can not be considered, and we must therefore exclude this matter from consideration.

In relation to the claim on behalf of monthly rated employes we find that Article III, Section 1 of the August 19, 1960 Agreement covers only hourly or daily rated employes. The Agreement can not be construed to cover monthly rated employes.

It must be the finding that the claims of the hourly and daily rated Claimants be sustained. The claims of the monthly rated employes are denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claims of hourly and daily rated employes sustained. Claims of monthly rated employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1966.

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