



Award No. 15377
Docket No. MW-14675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed to allow holiday pay (eight (8) hours' pay at the pro-rata rate) for the Labor Day Holiday 1962, to Track Laborers G. Madaio, P. Kelly and P. Plante. (Carrier's Docket No. 9402.)

(2) Track Laborers G. Madaio, P. Kelly and P. Plante each be allowed eight (8) hours' pay at the track laborer's straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Each claimant had established over 60 days of seniority prior to the Labor Day holiday of 1962, and was an hourly rated employee.

Because of a force reduction, the claimants were furloughed at the close of work on August 31, 1962. The claimants were available for service on the work day preceding and the work day following the subject holiday.

Each claimant had compensation for service rendered the Carrier which was credited to (11) or more of the (30) calendar days immediately preceding the subject holiday.

The Carrier failed and refused to allow each claimant eight (8) hours' pay at his pro-rata rate for the Labor Day holiday of 1962.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Prior to August 31, 1962, Track Laborers G. Madaio, P. Kelly and P. Plante, the claimants in this case, held assignments as track laborers in the Carrier's Maintenance of Way Department. They were employed under the jurisdiction of Track Supervisor R. H. Jackson, Providence, Rhode Island.

Effective with the close of business on August 31, 1962, the claimants were furloughed in a force reduction.

The Brotherhood of Maintenance of Way Employees thereafter submitted claim that claimants be allowed one day's pay for the holiday, September 3, 1962, under the provisions of the August 19, 1960 National Agreement, which is hereinafter referred to as the 1960 Agreement.

The Carrier denied the claim for holiday pay on the basis that the claimants had not indicated in writing their desire to be considered available for service while in a furloughed status.

Claim was timely submitted by the Brotherhood, culminating in final handling of the matter by the undersigned, who is the highest officer designated to handle such matters on the property. Attached in exhibit form are copies of the following documents:

Exhibit A — General Chairman Thomas Christensen's appeal to the undersigned, dated January 25, 1963.

Exhibit B — Carrier's final decision dated March 13, 1963.

A copy of the applicable Agreement between the parties is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On Friday, August 31, 1962, Claimants who were regularly assigned track laborers, were furloughed by force reduction and did not work on Tuesday, September 4, 1962, the day following the Labor Day holiday. Each of these Claimants held seniority for more than 60 calendar days prior to the holiday and each performed compensated service on eleven (11) or more days during the thirty (30) calendar days immediately preceding the Labor Day holiday.

Claimants, hourly rated employees, contend that under Article III of the August 19, 1960 National Agreement, they were "other than regularly assigned employees" and were entitled to be compensated for the Labor Day holiday.

Carrier contends that Claimants were not available for service by reason of the fact that none had complied with Rule 3(C) (Article IV of the August 21, 1954 Agreement), of the parties agreement, to indicate their availability for extra or relief service.

This Board has held on numerous occasions that under circumstances such as this, Claimants were "available for service," and that the requirements of Article III of the August 19, 1960 National Agreement were satisfied. See Awards 15017, 14890, 14730, 14635, 14626, 14625, 14515 through 14524, 14431, 14390 and 14365.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1967.