

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY 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 for New Year's Day 1961 to furloughed employes (identified in Part (2) hereof), who had qualified for such holiday pay prior to being laid off in force reduction.

(2) R. G. Gronlund, D. J. Kinney, R. P. Stauber, B. S. Tverberg, R. H. Anderson, K. J. Watry, K. L. Vashaw, C. T. Paulson, J. S. Ladzinski, C. R. Leppikko, A. G. Dahlman, T. Novoselac, G. J. Gandsey, H. L. Kamunen, H. H. Love and J. I. Carlson each be allowed eight hours' pay at their respective straight time rates.

EMPLOYEES' STATEMENT OF FACTS: Each of the claimants has established and holds seniority as a track laborer.

On December 30, 1960, each of the claimants was furloughed because of force reduction.

Each of the claimants worked on the work day immediately preceding the New Year's day holiday and each was available for work on the work day immediately following the New Year's day holiday.

Each of the claimants performed eleven (11) or more days of compensated service within the thirty (30) calendar days immediately preceding the New Year's day holiday.

The Carrier failed and refused to allow any of the claimants holiday pay for New Year's day.

The Agreement in effect between the two parties to this dispute dated June 1, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

Section No. 28, 29, when seniority permits. Returned to work on May 8, 1961.

J. I. Carlson was laid off Section No. 28, December 30, 1960. Filed form 1345 dated December 30, 1960 desiring to return to work on Section No. 28 when seniority permits. Returned to work on May 1, 1962.

Claimants A. G. Dahlman, Seniority No. 65, G. J. Gandsey, Seniority No. 105, C. R. Lepikko, Seniority No. 206, H. L. Kamunen, Seniority No. 106, T. Novoselac, Seniority No. 123, J. S. Ladzinski, Seniority No. 199, R. P. Stauber, Seniority No. 211, B. S. Tverberg, Seniority No. 212 and R. S. Ground, Seniority No. 215, could have exercised their seniority in accordance with the provisions of the agreement, to positions held by junior employees on January 3, 1961 and thereby qualifying for holiday pay. Mr. Arther N. Earnest, Seniority No. 218, was actively at work on January 3, 1961, and received holiday pay for the New Year's Day holiday, January 2, 1961.

The agreements involved in this dispute are Paragraph (b) of Rule 6 of the June 1, 1953 Agreement; Article II, Holidays of the August 21, 1954 Agreement; Article IV, Carrier's Proposal No. 6 of the August 21, 1954 Agreement; and Article III, Holidays, of the August 19, 1960 Agreement.

None of the claimants made themselves available for extra or relief work in accordance with the provisions of Article IV of the August 21, 1954 Agreement, hereinafter quoted in Carrier's position and therefore, have no legitimate claim to the holiday payment for the New Year's Day holiday, January 2, 1961.

The instant case was handled on the property in accordance with agreement rules up to and including the denial on final appeal by the Director of Personnel who is the highest officer of the Company authorized to handle disputes on the property. Correspondence exchange in handling of claims on the property has been reproduced and attached as Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here is for holiday pay for New Year's Day in 1961. Claimants were furloughed on December 30, 1960, and as of the holiday they were "other than regularly assigned employees" within the contemplation of Article III, Section 1 of the August 19, 1960 National Agreement.

The Employees contend that Claimants met the qualifications for the holiday pay claimed since they all had a seniority date for at least 60 calendar days preceding the holiday, had compensation for service paid them by the Carrier credited to 11 or more days in the 30 calendar days immediately preceding the holiday, and were available.

Carrier's defense to the claim in general is that the Claimants were not available since they did not make themselves available for extra work in accordance with Article IV of the August 21, 1954 National Agreement. Carrier raises subsidiary defenses with respect to certain of the Claimants, i.e., one Claimant did not file his name and address in accordance with Rule 6(b) to retain his seniority, and certain of the other Claimants could have exercised their seniority but instead elected to take furlough, hence, they layed off of their own accord and were not available.

As to the subsidiary defenses raised by the Carrier, they cannot be considered. The record discloses that the Carrier did not raise these defenses during handling of the claim on the property and in line with the prevailing authority they cannot be raised for the first time before the Board.

The issue framed by the claim as handled on the property has been ruled upon a number of times by this Board in favor of the Employees and the claim will be sustained. See Awards 14625, 14635, 15017, 15377 and 15417.

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 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 28th day of July 1967.