

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20427

Docket Number SG-20089

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company violated the Mediation Agreement Case No. A-8433, dated April 21, 1969, by refusing to compensate Mr. J. L. Wiltse eight (8) hours Holiday allowance (Birthday) when his birthday occurred during assigned Vacation period.

(b) Mr. J. L. Wiltse be allowed eight (8) hours additional compensation for his Birthday Holiday August 20, 1971, which occurred on final day of his vacation.

Carrier's File: SIG 162-327

OPINION OF BOARD: Claimant was a regularly assigned employee. On July 24, 1971, the United Transportation Union commenced a strike against Carrier and posted picket lines. As a result, Carrier's operations were suspended and Claimant was notified that his position was abolished effective with the commencement of the strike, and for the duration thereof.

The strike was settled on August 3, 1971. Claimant started his assigned vacation on Monday, August 2, 1971 and was compensated at the rate of his regular position during the vacation period, which extended through August 20, 1971. Claimant returned to work and received compensation on Monday, August 23, 1971, his first assigned work day immediately following the vacation period.

Claimant's birthday fell on August 20, 1971, however the Carrier refused to pay him an additional eight hours' pay for that day.

The Agreement specifies that when a birthday holiday falls during a vacation period, a regularly assigned employee shall receive holiday pay, provided he meets the qualification requirements as specified. Included among those qualification requirements, is the necessity to be compensated by the Carrier on the work days immediately preceding and following the vacation period, or if the employee is not assigned to work, that he be available for service on such days. Claimant asserts that he worked and received compensation for July 23, 1971 (his last assigned work day immediately preceding

the vacation) but Carrier bases its refusal to compensate because he did not work on July 30, 1971 which Carrier maintains is the crucial day.

Carrier asserts that the Claimant was neither a "regularly assigned employee" or a "other than regularly assigned employee" but, in point of fact, was a "suspended employee." Further, the carrier asserts that even if it could be considered that Claimant is "other than regularly assigned," he did not meet the qualifying requirements:

"(3) if on the workday preceding and the workday following the employee's birthday he satisfied one or the other of the following conditions:

(i) Compensation for service paid by the Carrier is credited; or

(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 raised the same basic contentions in a dispute with another Organization which this Board recently resolved, against Carrier. Award No. 20269 considered the same strike, and the same dispute as to which day should be considered the Claimant's "workday" during the period of the strike. The Board noted:

"Similarly, there is no basis for concluding that Claimants had a 'suspended' status because they held 'quasi-regular assignment' status during the strike. The meaning of those terms is somewhat elusive; however, to the extent we understand their meaning, we believe that they would still be subsumed in the phrase 'other than regularly assigned' insofar as this dispute is concerned. Awards Nos. 15635 and 14515."

We feel that the ultimate issue presented to us in this dispute is whether the Claimant is considered as "not available" and the presumption that Union men will not cross picket lines as that relates to the failure to work.

This Board has concluded, on prior occasions, that there is a "presumption" that Union members will not usually cross a picket line. See, for example, Award No. 19836. While we do not dilute the presumption stated

by this and other Divisions to that effect, we concur with Award No. 20269 that those decisions do not dispose of the dispute. Item 3 of Section 6(d), cited above, states that the term "available" as used therein means that an employee is available unless he lays off of his own accord or does not respond to a call. Clearly, those circumstances did not apply to Claimant herein.

There may be a requirement that a Claimant show affirmative evidence to demonstrate that he would have crossed a picket line when he submits a claim for work performed by improper personnel behind a picket line. But the record here is clear that the position was abolished so that there was no work to be performed behind the picket line. It is unrealistic to require a Claimant to show that he would have crossed a picket line to perform non-existent work. See Award No. 20269.

Under the facts and circumstances of this record, we believe that the claim should be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.