

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24505
Docket Number SG-23873

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago, Rock Island and Pacific Railroad Company

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

Claim No. 1

Claim for eight (8) hours' pay for Labor Day, September 3, 1979, for all maintainers under the jurisdiction of Signal Supervisor A. M. Smith on August 28, 1979. General Chairman file: AV-G-292. Carrier file: L-130-643

Claim No. 2

Claim for eight (8) hours' pay for Labor Day, September 3, 1979, for all employees on Gangs 1-3 and 4, and on Crews 10, 11, 12, 13, 14, 15 and 16 on August 28, 1979. General Chairman file: AV-G-285. Carrier file: L-130-638

Claim No. 3

Claim for eight (8) hours' pay for Labor Day, September 3, 1979, for all members on Gang No. 9 (Silvis Signal Shop) on August 28, 1979. General Chairman file: AV-G-286. Carrier file: L-130-641

Claim No. 4

Claim for eight (8) hours' holiday pay for Labor Day, September 3, 1979, for all signal maintainers and testmen working on the Missouri-Kansas Division on August 28, 1979. General Chairman file: AV-G-287. Carrier file: L-130-639

Claim No. 5

Claim for eight (8) hours' holiday pay for Labor Day, September 3, 1979, for all signal maintainers and testmen working on the Southern Division. General Chairman file: AV-G-288. Carrier file: L-130-640

Claim No. 6

Claim for eight (8) hours' holiday pay for Labor Day, September 3, 1979, for all signal employees on the Illinois Division on August 28, 1979. General Chairman file: AV-G-291. Carrier file: L-130-642"

OPINION OF BOARD: An initial question has been raised by the Carrier as to the jurisdiction of this Board to resolve this matter. An order was handed down by the United States District Court in 1980 in connection with bankruptcy proceedings at which time the Carrier was ordered to liquidate. The Carrier alleges that it has not existed as a Carrier since the date of that order and, therefore, it is no longer under the jurisdiction of the Railway Labor Act. It further concludes that this Board has no jurisdiction in this matter. This procedural issue has been raised by the Carrier in previous matters, and the Board has consistently ruled that the Carrier is subject to the jurisdiction of this Board. We accept the rationale of the Awards involved and will conclude that the Board does have jurisdiction to consider this matter and will, therefore, proceed to evaluate the merits of the issues raised (See Second Division Awards 8970, 9204, 9314)

The Claimants herein seek eight hours' pay for Labor Day, September 3, 1979 pursuant to Rule 16, Section 3 of the Agreement between the parties. Rule 16 incorporates the National Holiday Agreement of August 1, 1954 as amended. The Carrier had not paid the Claimants involved because the Claimants had not satisfied the condition of the agreement which required that, under these circumstances, the employees would have had to have been available for work on the day before and the day after Labor Day.

The Carrier alleges that these Claimants were not available for employment because immediately upon the establishment of a strike by another Organization of the Carrier, the Carrier immediately furloughed these Claimants. The Carrier then concludes that these Claimants, as furloughed employees, were not available for work on the days involved. Further, the Carrier has denied these claims because some of the Claimants were monthly rated and are not entitled to separate holiday compensation.

The Carrier is aware of many prior Awards of this Board which are possibly contrary to its position but suggests that in the case at hand new ground needs to be broken.

We have examined the two Awards cited by the Organization (20269 and 20427) as well as the Awards cited on behalf of the Carrier. Both of these Awards involved vacation pay for birthdays. In each instance, the Claimants' positions were abolished because of a strike by another Organization. Both Awards concluded that the provisions in the agreement apply classifying the employees as "other than regularly-assigned employees".

X-1 The specific language in the rules to be interpreted is the provision which provides "such employee is available for service" and the note which follows which provided that "available" as used in Subsection (ii) above is interpreted by the parties to mean that "an employee is available unless he laid off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service." (Emphasis added.)

X-2 The Carrier is, in effect, alleging that the provision of this portion of the Agreement should not be applied to a furloughed employee and that under these circumstances the employee would not be available because even if he were not furloughed, he would not report to work because of the time-honored tradition among the affected labor organizations not to cross a picket line.

X-3 The holiday pay for monthly rated employees is computed in separate sections of the National Holiday Agreement and is not governed by Section 3 which is the claim here. We are inclined to support the two Awards cited by the labor organization. This Board feels that, in this instance, we are limited by the terms of the Agreement which has specifically defined what is meant by the term "available" and since, pursuant to that definition, the Claimants herein did not lay off of their own accord nor did they refuse to respond to a call, then under the terms of the agreement, they are available and the claim will 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

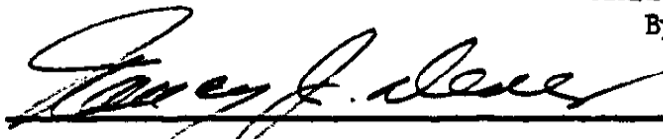
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.