NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25351
Docket Number MW-25337

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Kansas City Terminal Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow Trackmen M. W. Springer, M. D. Stallbories, T. E. Rodecap, C. L. Howerton, C. K. Fultz, L. R. Leslie and D. K. Rich and Trackmen-Machine Operators S. J. Barnes, A. R. Katamura, K. L. Clark, J. A. Ortiz and B. G. Strozier holiday pay for New Year's Day (January 1, 1982).

(2) The claimants shall each be allowed eight (8) hours of pay at their respective straight-time rates in effect on the claim date because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: On February 21, 1982, a claim was filed by the Organization for compensation for Holiday pay for January 1, 1982, for the twelve (12) Claimants named in the Statement of Claim. The claim alleges that the Carrier was in violation of Article II, Section 2(c) of the National Holiday Agreement of February 10, 1971. After the claim was disallowed by the Carrier it was appealed on property up to and including the highest Carrier Officer designated to hear such and it is now before the Third Division of the National Railroad Adjustment Board.

A review of the record shows that the Claimants were furloughed on December 31, 1981. The Agreement provision cited by the Organization in its claims reads as follows:

> "Subject to the applicable qualifying requirements in Section 3 thereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph (b) above, provided (1) compensation for service paid him by the Carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment."

There is no dispute on property that all of the Claimants were compensated for service on eleven (11) or more of the thirty (30) calendar days immediately preceding January 1, 1982, that each had a seniority date of at least sixty (60) days preceding that Holiday, and that none had been terminated for reasons stated in the Agreement provision cited above.

In denying the claim on property the Carrier contends that since the Claimants had not made themselves available for extra and relief work under provisions of Article IV of the August 21, 1954, Agreement (Appendix A of the current Agreement) they had no claim to the Holiday compensation in question. This Board has dealt with an issue similar to the one at bar on a number of occasions in the past. By established precedent the Board has held that employes such as the Claimants who are on involuntary furlough are other than regularly assigned employes as so claimed by the Organization (Third Division Awards 14431, 14515). Further, the Board has also ruled in the past that when employes are on involuntary furlough, and when they have qualified for Holiday pay, they need not also to be held accountable for compliance with contract requirements for extra status employes as so contended by the Carrier (Third Division Awards 14635, 15787). The reasoning found in those earlier Awards is herein incorporated. 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 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.

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 15th day of March 1985.