

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25391
Docket Number CL-24771

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (*(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees*
(*The Baltimore and Ohio Railroad Company*

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9644) that:

(1) Carrier violated the Clerk-Telegrapher Agreement in effect between the Parties when, for date of November 11, 1980 (Veterans Day Holiday), it failed and refused to compensate Extra employee L. L. Blair, and

(2) Because of such impropriety, Carrier shall be required to compensate Miss L. L. Blair eight (8) hours' pay at pro rata rate for November 11, 1980.

OPINION OF BOARD: Claimant L. L. Blair is an extra employee who at the time of this dispute held a position on the extra list at Willard, Ohio. In her current status as an extra employee, Claimant would normally be qualified for Holiday pay under Section 3, Article III, of the August 19, 1960, Mediation Agreement. Those conditions read as follows:

"Section 3, Article III - August 19, 1960 Mediation Agreement:

"All others for whom holiday pay is provided in Section 1 hereof, shall qualify for such holiday pay if, on the workday preceding and the workday following the holiday, they satisfy 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."

On November 5, 1980, Claimant marked off duty under bereavement leave. She marked back up at 10:25 A.M. on November 10, 1980. November 11, 1980, was a paid Holiday. Claimant was not paid for the Holiday account she was not available for work for the 24-hour period preceding the Holiday. The Organization contends, however, that Claimant was available for work on the day before the Holiday, as well as on the day after and that, as such, she should be paid eight hours at the pro rata rate for November 11, 1980.

There is no dispute over the facts of the case. It is agreed that Claimant was available for work from 10:25 A.M. to midnight on November 10, 1980, and that she was available for work on November 12, 1980. The dispute between the parties involves the meaning of being available for service "on the day preceding and the day following the holiday".

This Board has reviewed the record, the contract language involved, and the awards presented by each party to support its respective position and we must conclude that the weight of the evidence and the accepted application of contract interpretation principles and the award submitted weigh in favor of the Carrier's position.

At the outset of a discussion of the disputed language, it must be pointed out that the important point here is what the parties intended when they wrote the disputed language and placed it in an Agreement. It is clear that if one were to adopt the Organization's position in this case, you would have to agree that the employee met the qualifying requirement of being available for work if she marked up for work any time during the 24-hour period preceding the Holiday. That position would clearly undermine the Carrier's ability to call the employee for available work and almost guarantee that the employee would not be called to work on the day preceding the Holiday. The more reasonable application of the language is that the extra employee must be marked up for work on the 24 hours preceding the Holiday in order to qualify for Holiday pay. Claimant in the instant case marked herself off for a portion of the day before the Holiday. She was only available for work on a part of the day. She failed to meet the requirement of being available for work on the day preceding the Holiday and we shall deny her claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.