

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Track Foreman G. T. McMickens, Assistant Foreman J. R. Flournoy, Track Laborers J. E. Mouton, J. C. Jones, J. L. Thibodeaux, T. Zackery, R. J. Morale, R. D. Eaglin, L. P. Savoy, D. A. Samora and Laborer - Driver M. Z. Argo, for 16 hours each at their respective straight time rates of pay account them not being compensated for the Thanksgiving Holidays." (MW-85-34)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The dispute here at issue concerns a question as to whether the Claimants were deprived of holiday pay by reason of their own action in waiting until after their jobs had been abolished to exercise seniority to positions which continued to be occupied by less senior employees, or whether they were denied timely opportunity to make a displacement because of the manner in which the Carrier had handled force reductions at the time and the Carrier practice of not allowing displacements after regular starting times for positions.

Basically, the position of the Organization is as summarized in one of its letters during the handling of the claim on the property, and that is as follows:

"During the conference you were advised that these employees were unable to receive an assignment due to the fact there was a very large force reduction at this time and employees were being assigned being displaced before they reached that assignment and assigned again all in the same day. Therefore these employees had to wait until they were completely furloughed before they could receive another assignment the morning of November 21, 1984 at 8:00 A.M. when the assignment clerk came on duty and this was too late in the day to displace on November 21, 1984.

You were also advised that it was not the fault of these employees that they were given a five (5) day notice and were not allowed or required to perform service those five days this was a management decision.

These employees would have been available for work if they would have been informed where they could report prior to work time on November 21, 1984."

The Carrier submits it had provided a required 5-day notice that positions which the Claimants occupied were to be abolished effective the close of business on November 20, 1984, and had ample time to exercise displacement rights to other positions, particularly in the light of the fact that the Claimants were not required to perform service during the five days of notification of the abolishment of their positions.


The Carrier thus maintains that since the Claimants made themselves unavailable for service in accordance with provisions of the current Agreement, they are not entitled to holiday pay as claimed.

In consideration of the record as presented and developed, and without in any way suggesting that under normal circumstances it would not be incumbent upon displaced employees to make a timely exercise of seniority so as to become eligible for holiday pay, we think that in the instant case the Organization has shown that the situation which here prevailed was other than normal and that the Carrier has not successfully refuted such contentions either by argument of record or by showing the assignments to which the Claimants could have displaced. Therefore, and limited to the facts and circumstances of this particular case only, the Board believes the Claimants were wrongfully denied benefit of holiday pay. The claim will be sustained without precedent.

AWARD:

Claim sustained.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


M. A. Christie
Organization Member

Branson, MO
May 19, 1986