SPECIAL BOARD OF ADJUSTMENT NO. 488

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKETS NOS. 8 and 9

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

(1) The Carrier violated the effective Agreement by failing to compensate Trackmen E. A. Rhoe and G. E. Rhoe, Cumberland Division for Holiday pay for Labor Day, September 5, 1960.

(2) That claimant Trackmen E. A. Rhoe and G. E. Rhoe be now paid eight hours each, at their respective trackman's rate of pay, for the holiday pay due them for Labor Day, September 5, 1960."

FINDINGS: We are here concerned with Article III of the August 19, 1960 Agreement relating to Holidays, particularly that portion of Section 3 relating to a regular employee who

> "is not assigned to work but is available for service on such days."

Under such circumstances, the other than regularly assigned employee "shall qualify for such holiday pay if

> "(ii) Such employee is <u>available</u> for service."

Article III, referred to above, by specific language amended, to the extent indicated, Article II, Sections 1 and 3 of the Agreement of August 21, 1954.

Carrier here involved predicated its argument on the "Note" defining the meaning of the word "Available" in the August 19, 1960 Agreement. It reads as follows:

> "'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."

And, Carrier argues, "pursuant to the rules of the applicable agreement, for service" means Section 2 of Article IV of the August 2, 1954 Agreement which reads:

> "Furloughed employees desiring to be considered available to perform such extra work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work."

The above quoted Section, by its terms, became effective November 1, 1954 "except on such Carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative or representatives on or before October 1, 1954."

It is argued by the Organization here that this Carrier continued to follow the practice of permitting employees who were laid off by reason of force reduction or displacement to retain their seniority rights -- including recall for extra work -- by filing their names and addresses within ten days of last service -- under Rules 44 and 39 of the agreement between the parties. (Tr. p. 460, 464, 478, 479).

It is evident from this record that the first formal notice given the Organization by the Carrier of its intention to utilize the 1960 holiday provisions in lieu of Rules 44 and 39 was on December 29, 1960 when the Carrier so advised the Organization's General Chairman in conference at Carrier's office in Baltimore.

Carrier admits (Tr. p. 451) that the provision of the 1954 Agreement on extra and relief work was optional.

Having ignored the provisions of Article IV, Section 2 of the August 21, 1954 Agreement from its inception until the enactment of Section 3 of the August 19, 1960 Agreement, the Carrier, cannot, after a lapse of six years, now abandon its prior practice without advance notice to the Organization.

Such notice not having been served on the Organization until December 29, 1960 the holiday pay claims pending before this Board alleging rules violations prior to that date will be sustained, and all claims based on alleged violations occurring on or after December 29, 1960, will be denied.

The claims in Dockets Nos. 8 and 9 being for holiday pay for Labor Day, 1960, which was prior to December 29, 1960, a sustaining award is required.

A W A R D

Claims sustained.

Edward A. Lynch
Chairman

A. J. Cunningham
Employee Member

W. B. Kohler
Carrier Member

Dated at Baltimore, Maryland,
21st day of May, 1964.