

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONWith Referee Robert M. O'Brien

Award 23 246

Docket 43 138

PARTIES (Brotherhood of Locomotive Engineers
TO (
DISPUTE (
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Case No. 76-70:

"Claim of Engineer V. D. Johns, Return No. Holiday Pay, dated January 1, 1976, for Holiday Pay account assigned to Road Switcher Service at Union City, Georgia."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

On December 30, 1975, Claimant, Engineer V. D. Johns, was regularly assigned to Union City Road Switcher No. 1 at Union City, Georgia. He protected this assignment on December 30, 1975. On December 29, 1975, Carrier issued a bulletin abolishing Union Switcher No. 1 effective at the completion of duty on Tuesday, December 30, 1975. That same bulletin also re-established Union City Road Switcher No. 1 commencing January 2, 1976. The Claimant claimed and worked this assignment on January 2, 1976. He submitted a claim for holiday pay pursuant to the provisions of Article 45, Section 2(c) of the parties' Schedule Agreement for the holiday, January 1, 1976. However, Carrier declined his claim for holiday pay.

It is the Employees' position herein that Claimant's claim for holiday pay for January 1, 1976, is fully supported by the provisions of Schedule Agreement Article 45, Section 2(c). They assert that Claimant did not mark off duty on December 31, 1975, the day preceding the holiday; nor did he mark off duty on January 1, 1976, the holiday. Therefore, he was available for service on these two days and was entitled to the holiday pay provided by Article 45, Section 2(c). The Employees concede that Claimant did not perform service on December 31, 1975, nor did he perform services on January 1, 1976. However, they maintain that he did not perform service since Carrier had abolished his assignment for these two days. The Employees submit that Claimant was available for a call on December 31, 1975 but Carrier never called him for service. There is simply no evidence in the record at hand, in the Employees' view, which would demonstrate that Claimant was not ready and willing to perform service for the Carrier.

on December 31, 1975, the day preceding the holiday in question. He was not required to mark up on the extra board for this day when his job was abolished by the Carrier as the Carrier appears to suggest. In sum, the Employees argue that Claimant fully complied with the requirements of Article 45, Section 2(c), and is, therefore, entitled to holiday pay for the holiday, January 1, 1976.

Carrier retorts that when Union City Switcher No. 1 was abolished after completion of the tour of duty on December 30, 1975, Claimant did not place himself on any service subsequent to this date until 2:55 P.M. on December 31, 1975, when he claimed the Union City Road Switcher No. 1 to commence work on January 2, 1976. Accordingly, Carrier contends that Claimant was not available for service on the entire day, December 31, 1975, the qualifying day immediately preceding the holiday in question. It asserts that Claimant could have placed himself on the extra board for December 31, 1975, but chose not to do so. Inasmuch as Claimant was not regularly assigned to service on December 31, 1975, nor was he available for service this entire day, Carrier submits that Claimant did not qualify for holiday pay under the provisions of Article 45, Sections 2 (a) and (c).

The provisions of Article 45, Section 2(c) are quite clear and explicit. They provide as follows:

"To qualify for holiday pay, a regularly assigned employee referred to in paragraph (a) hereof must be available for or perform service as a regularly assigned employee in the classes of service referred to on the work days immediately preceding and following such holiday, and if his assignment works on the holiday, the employee must fulfill such assignment. However, a regularly assigned employee whose assignment is annulled, cancelled or abolished, or a regularly assigned employee who is displaced from a regular assignment as a result thereof on (1) the workday immediately preceding the holiday, (2) the holiday, or (3) on the workday immediately following the holiday will not thereby be disqualified for holiday pay provided he does not lay off on any of such days and makes himself available for service on each of such days excepting the holiday in the event the assignment does not work on the holiday. . . ."

The central question involved in this dispute is whether Claimant was available for service on December 31, 1975, the workday immediately preceding the holiday, January 1, 1976? Despite Carrier's firm argument to the contrary, it is the considered opinion of this Division that Claimant was indeed available for service on December 31, 1975, the workday immediately preceding the holiday.

It must be noted that Article 45 did not obligate Claimant to place himself in other service, such as on the extra board, on December 31, 1975, after Carrier had abolished his position for that day. The facts evidence that Claimant never marked off duty on December 31, 1975. Nor does the evidence demonstrate that Carrier called Claimant for service on this date and that Claimant failed to accept the call. Claimant never made himself unavailable for service on the day immediately preceding the holiday in question. Insofar as we can discern, he was ready and willing to perform service for the Carrier were the Carrier to call on him to do so. However, Carrier never called him for service on this day. This Division is convinced that Claimant was available for service the entire day, December 31, 1975, although he admittedly did not place himself on the extra board this day. As observed heretofore, Article 45 did not require claimant to place himself on the extra board for the workday immediately preceding a holiday as a condition precedent entitlement to holiday pay.


For all the foregoing reasons, this Division is impelled to conclude that Claimant was indeed available for service on December 31, 1975, the workday immediately preceding the holiday in question. We hold, therefore, that claimant complied with the requirements of Article 45, Section 2(c) and is entitled to holiday pay for January 1, 1976 as a result.

AWARD: Claim sustained.

DATED AT CHICAGO, ILLINOIS
THIS 27th DAY OF January 1981

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: 
Assistant Executive Secretary