

Award No. 2246
Docket No. 2125
2-SP(PL)-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to pay Laborer Manuel Zaragoza eight (8) hours' pay at the pro rata hourly rate of his regular assigned position on the third shift 11:30 P. M. to 7:30 A. M. on Thanksgiving Day, Thursday, November 25, 1954.

EMPLOYEES' STATEMENT OF FACTS: At Tracy, California, Southern Pacific Company's roundhouse, the carrier's general foreman elected to establish relief position to cover service requirements by assigning Laborer Manuel Zaragoza to the relief position. His assignment as reliefman is Monday through Thursday. On Thursday he is required to commence two shifts in the same calendar day. The first shift at 7:30 A. M. to 3:30 P. M. and the second shift at 11:30 P. M. to 7:30 A. M. during his work week.

For his first shift, management did compensate him at the rate of time and one-half for eight (8) hours plus eight (8) hours at the straight time rate as holiday pay for Thanksgiving Day, November 25, 1954.

For his second shift on the same calendar day he was compensated at the rate of time and one-half for his eight (8) hours service for relieving the second employe, thus recognizing the second shift as a holiday on his regular assigned shift.

This dispute has been handled up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective September 1, 1949, as it has been subsequently amended, and the agreement of August 21, 1954 is controlling.

POSITION OF EMPLOYEES: It is submitted to be the employes' understanding of the aforementioned controlling agreements that the Claimant Manuel Zaragoza was regularly assigned to work the reliefman's position, which included his commencing two (2) relief shifts on the same calendar day, one at 7:30 A. M. and the other at 11:30 P. M. on Thursdays of each of his

is nothing in Section 1 of Article II which in any manner changes existing rules in the current agreement with reference to work performed on holidays, and in addition to compensation allowed for the holiday, November 25, 1954, under Section 1, Article II, of the agreement of August 21, 1954, the claimant was properly compensated under existing agreement provisions for the work he performed on that date. As stated above, the basis of payment for work performed by the claimant on the holiday involved is not in dispute. Consequently, Section 5, quoted above, obviously has no application to the instant claim.

In the absence of specific agreement provisions or understandings to support the contentions presented, the burden of proof is the obligation of the petitioner.

The petitioner in this case is simply attempting to secure through an award of this Division a new agreement over and above that which was agreed to by the parties. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists.

CONCLUSION

The carrier asserts that it has conclusively established the claim is without basis under the provisions of Section 1, Article II, of agreement dated August 21, 1954, or under any other agreement provision or understanding, and it is requested that said claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectfully carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

Laborer Manuel Zaragoza was regularly assigned to an established relief position at Tracy, California. His assignment was Monday through Thursday with two shifts on Thursday. Consequently he worked two (2) shifts on Thursday (Thanksgiving Day), November 25, 1954. Carrier paid him at the rate of time and one-half for both of these shifts in accordance with Rule 18(a) of the parties' effective agreement. It also paid him eight (8) hours' pay at the pro rata rate in accordance with Article II, Section 1 of the National Agreement dated August 21, 1954, to which the carrier and organization were parties. The claim is here made that he should have been paid for two (2) holidays on this date since he worked two (2) shifts thereon. Consequently this claim is made for an additional eight (8) hours of pay at the pro rata rate.

It is the organization's thought that claimant should be paid eight (8) hours of pro rata holiday pay for each of the positions included in his regular relief assignment and worked by him on Thanksgiving Day.

We held in our Award 2169 that the holiday pay provisions of Article II, Section 1 of the National Agreement of August 21, 1954 apply to an employe who is regularly assigned to and on a regular job or position and does not attach itself to or become a part of the job or position. Claimant was regularly assigned to a relief job and therefore, because of that fact, entitled to holiday pay whenever one of the holidays enumerated in the foregoing section fell on a workday of his work week and not because of the fact that on such holiday he worked one or more shifts of positions the relief days of which were part of his regular assignment. For the work he performed on such

holiday he was entitled to be paid in accordance with Rule 18(a) but for the holiday itself he was entitled to receive only eight (8) hours' pay at the pro rata rate. The carrier having paid him accordingly we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.