Award No. 2254
Docket No. 2192
2-CMStP&P-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular memebrs and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied the following named employes of the Carmen's Craft at the Terre Haute, Indiana Car Shops and other nearby points—

C. W. Deverick	A. C. Myers	Kenneth A. Green
Oscar Baid	C. O. Robbins	W. Larew
J. A. Parr	S. F. Lentz	Elmer G. Keller
Christy Lawhos	Karl V. Nipple	Carl E. Sparks
W. H. Brooks	W. P. Tyler	C. P. Currie
R. R. Clark	R. E. Wellman	O. E. McIntire
C. O. Modesett	Mark E. Oziu	D. M. Perdiew
A. J. Graam	Warren W. Thompson	H. R. Schwartz
Clarence Graff	C. W. Campbell	J. J. Austin
Ralph M. Perry	C. M. Haiden	Kenneth A. Austin
L. Frederick	J. R. Volpart	Paul R. Patton
Edward H. Kossiner		

eight (8) hours' pay at the pro rata rate for July 5, 1954, a legal holiday.

2. That, accordingly, the Carrier be ordered to compensate the above named employes for eight (8) hours' holiday pay for July 5, 1954.

EMPLOYES' STATEMENT OF FACTS: The above named employes, hereinafter referred to as the claimants, were regularly assigned employes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, at the Terre Haute, Indiana Shops in the carmen's craft holding seniority in their respective class.

The claimants were assigned to a work wek of Monday through Friday, with rest days of Saturday and Sunday.

agreement in any particular case extend the 9 months' period herein referred to."

This claim was declined on May 26, 1955 by Mr. C. P. Downing, assistant to vice president, who is the highest designated officer of the carrier. Therefore, if this claim was to be further progressed by the employes they were obligated to file their ex parte submission with your Honorable Board on or before February 26, 1956.

It is the carrier's position that unless the employes filed their ex parte submission with your Honorable Board on or before February 26, 1956, this claim is barred.

Section 1 of Article II of the agreement of August 21, 1954 referred to above reads in part as follows:

> "**Section 1.** Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe."

By the above quoted provision, the first requisite is that an employe be regularly assigned as of the holiday if he is to qualify for holiday pay. Of course, as to four of the claimants, they failed to qualify for holiday pay not only because they were not regularly assigned as of Monday, July 5, 1954, but also by reason of the fact that they received no compensation from the carrier on their last work day preceding the holiday. As to the balance of the claimants, they were not regularly assigned as of Monday, July 5, 1954 which was the holiday. They had been laid off, or in other words, their assignments had been abolished as of the close of the shift on July 2, 1954 and effective at that time they were no longer regularly assigned employes.

In their handling on the property the employes have advanced no rule, understanding or agreement to show that these employes were regularly assigned as of July 5, 1954, in fact, they have made no contention that they were regularly assigned as of that date. They have simply contended that as they received compensation for work performed on July 2, 1954 and vacation compensation on July 6, 1954 they should have been paid 8 hours at the straight time rate as holiday pay applied to the holiday, July 5, 1954.

To emphasize the fact that the claimants were not regularly assigned as of July 5, 1954 we should like to refer to the several cases where employes were not recalled to service until after a subsequent holiday had passed. By the tabulation above it will be noted that some of the employes were not recalled to service until quite some time later. For instance, Claimant J. A. Parr was not recalled to service until November 15, 1954. During his absence from service, because of force reduction effective at the close of the shift on July 2, 1954, there occurred not only the holiday, July 5, 1954, but also the holiday, Monday, September 6, 1954. Inasmuch as he was not regularly assigned as of September 6, 1954, having been laid off July 2, 1954, he was not regularly assigned as of September 6, 1954. Having been laid off on July 2, 1954 he was no more regularly assigned as of July 5, 1954 than he was on September 6, 1954.

It is the carrier's position that none of the claimants were regularly assigned as of July 5, 1954 as they had been laid off at the close of the shift on July 2, 1954 and as of July 5, 1954 they were without an assignment. Accordingly, they were not entitled to holiday pay as of July 5, 1954.

The Carrier respectfully requests that the 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 employes or employes involved in this

dispute are respectively 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.

The claimants are a group of carmen who were employed at the Terre Haute, Indiana, car shops. On July 2, 1954, after proper notice, they were laid off in force reduction. Each was instructed to take his vacation during the shut down. Claimants contend their vacations commenced on July 6 and that it was a compensated day within the meaning of Article II, Section 3, of the August 21, 1954 agreement, which states in part:

> "An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the work-days immediately preceding and following such holiday. * * *."

The difficulty with the position of the claimants is that they were not regularly assigned hourly and daily rated employes. They were furloughed in accordance with agreement rules and had no assignment. Section 3 of Article II of the agreement of August 21, 1954, designates which regularly assigned hourly and daily rated employes are qualified for holiday pay. It is a limitation upon Section 1 of Article II, but the requirements of Section 3 of Article II must be met in any event. Claimants having no regular assignment on July 5, 1954, due to being furloughed, are not eligible for holiday pay for that day. This is the controlling difference between this case and that determined by Award 2149.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.