

Award No. 2342
Docket No. 2165
2-MKT-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. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Firemen and Oilers)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the applicable agreements the Carrier improperly denied compensation to Laborer Daniel Turner for the 7:30 A. M. to 4:00 P. M. shift for Christmas, December 25, 1954, and New Year's Day, January 1, 1955.

2. That accordingly, the Carrier be ordered to compensate Laborer Daniel Turner in the amount of eight (8) hours at the pro rata rate for each of the aforesaid holidays.

EMPLOYEES' STATEMENT OF FACTS: Daniel Turner, hereinafter referred to as the claimant, was employed by the Missouri-Kansas-Texas Railroad Company, hereinafter referred to as the carrier, as a laborer at Dallas, Texas and had a regular assignment as such as follows:

"Saturdays — 7:30 A. M. to 12 Noon

Lunch period 12 Noon to 12:30 P. M.

12:30 P. M. to 4:00 P. M.

Saturdays — 11:00 P. M. to 7:00 A. M.

Sundays — 11:00 P. M. to 7:00 A. M.

Mondays — 11:00 P. M. to 7:00 A. M.

Tuesdays — 11:00 P. M. to 7:00 A. M.

Rest Days Wednesdays and Thursdays"

On Saturdays, claimant is assigned to the repair track on the 7:30 A. M. to 4:00 P. M. shift, has an eight (8) hour rest period and is assigned to the roundhouse on an 11:00 P. M. to 7:00 A. M. shift. It will be noted he has two (2) eight hour shifts on the same day.

of laborer to which he was regularly assigned for each the holidays of Christmas and New Year's Day when they fell on regularly assigned work days of his regularly assigned relief position Saturday, December 25, 1954, and January 1, 1955.

This payment of eight hours at pro rata rate of his hourly rated regularly assigned relief position of laborer, Christmas and New Year's Day, was full payment and satisfaction of the requirement of Article II—Holidays, Section 1 of the agreement dated August 21, 1954, with the Fifteen Cooperating Organizations.

Payment made for **NOT** working under Article II—Holidays, Section 1, of agreement with Fifteen Cooperating Organizations dated August 21, 1954, is for the entire calendar day.

Only one payment for the calendar day for the holiday is made.

The payment has no relation to work performed on any shift and is not payment for any position.

The payment is personal to the employe when the employe meets the conditions precedent for payment under the rule.

It would seem this may be a claim for payment of sixteen hours at pro rata for each Christmas, December 25, 1954, and New Year's Day, January 1, 1955, under the provisions of Article II—Holidays, Section 1 of agreement with the Fifteen Cooperating Organizations dated August 21, 1954. Clearly such a contention is not supported by the rule which provides only for payment of "eight hours' pay at pro rata rate of the position assigned" (regular relief position).

The services of Daniel Turner as laborer on the 11:00 P. M. to 7:00 A. M. shift at Dallas roundhouse were necessary to the continuous operation of the railroad on Christmas, December 25, 1954 and New Year's Day, January 1, 1955, and position was bulletined to work in accordance with Rule 12 of the working agreement.

For work performed as laborer on the 11:00 P. M., December 25, 1954, to 7:00 A. M., December 26, 1954, beginning on Christmas, and for the 11:00 P. M., January 1, 1955 to 7:00 A. M., January 2, 1955, beginning on New Year's Day, Daniel Turner was paid eight hours at the rate of time and one-half rate of pay, which is full payment for his services under Rule 8(a) "Holiday Work."

From the foregoing it will be seen Mr. Turner has been fully and correctly paid, both for not working and for working on both Christmas, December 25, 1954, and New Year's Day, January 1, 1955, and he has no valid claim for services on those dates.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim, and grant said railroad companies, and each of them, such other relief to which they may be entitled.

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 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 were given due notice of hearing thereon.

Laborer Daniel Turner makes this claim for eight (8) hours of pay at the pro rata rate of his position for both Christmas Day, Saturday, December 25, 1954, and New Year's Day, Saturday, January 1, 1955, basing it on Section 1 of Article II of the National Agreement of August 21, 1954 to which all involved herein are parties. Admittedly the carrier has already compensated claimant for eight (8) hours at the pro rata rate of his position for each of these holidays.

First, carrier contends the Board does not have jurisdiction of the dispute because the claim handled on the property was not the claim progressed and handled on appeal to the Board. The claim handled on the property was broader but included the claim presented here on appeal. In view thereof we find this contention to be without merit.

The carrier also contends the claim was not appealed to this Board within the time provided for that purpose by Article V of the National Agreement of August 21, 1954. Section (c) thereof provides:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board * * *."

We think "proceedings are instituted" when there is filed with the Secretary of the proper Division a declaration of intent to submit a dispute. That was here done within nine (9) months. In view thereof we find this contention to be without merit.

Claimant was regularly assigned to a relief position of a laborer at Dallas, Texas. This relief position had two shifts on Saturday; the first on the repair track from 7:30 A. M. to 4:00 P. M., and the second in the roundhouse from 11:00 P. M. to 7:00 A. M. On each of these holidays claimant worked the shift from 11:00 P. M. to 7:00 A. M. and was properly paid therefor at time and one-half. As already stated, he was also paid eight (8) hours at pro rata rate for each of these holidays because they fell on a workday of his workweek. See Section 1 of Article II of the August 21, 1954 National Agreement. However, claimant contends he is entitled to receive eight (8) hours of pay at the pro rata rate of his position for each of the positions for which he was assigned on relief on Saturdays, that is, he contends that under the provisions of Section 1 of Article II of the National Agreement of August 21, 1954 he was entitled to receive eight (8) hours of pay for each shift to which he was thereon assigned. We have already answered this contention in our Award 2246 contrary to claimant's position. It would serve no purpose to repeat that discussion here. In view of what we said therein the claim here made must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.