

Award No. 2476

Docket No. 2332

2-C&O-SM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the applicable agreements the Carrier improperly denied Sheet Metal Worker Robert Pierce Zimmerman holiday pay for July 4, 1955, and Labor Day, September 5, 1955.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate Sheet Metal Worker Robert Pierce Zimmerman for the Fourth of July, 1955 and Labor Day, September 5, 1955, holiday pay for eight (8) hours each at the pro rata hourly rate.

EMPLOYEES' STATEMENT OF FACTS: At Huntington, W. Va. the Chesapeake and Ohio Railway Company maintains a locomotive and passenger coach repair shop. All sheet metal workers at that point are carried on one seniority roster and perform work in all departments in accordance with the rules of agreement. The name of Robert Pierce Zimmerman hereinafter referred to as the claimant is and has been for a number of years carried on the sheet metal workers' seniority roster with right to work at that point. The claimant was furloughed March 15, 1954 and on January 21, 1955 requested work under Article IV of the agreement signed in Chicago, August 21, 1954. The claimant was called in to work on or about April 17, 1955, worked until the latter part of April or first part of May, 1955 then was furloughed for a period of about three (3) days after which he was recalled and has worked continuously since that time five (5) days per week, Monday through Friday with rest days of Saturday and Sunday.

The two recognized holidays, Fourth of July and Labor Day, 1955 fell on a Monday and the claimant did not work nor receive compensation for those two days. The claimant did work and received compensation for the Friday preceding and the Tuesday following each of those holidays.

It will be seen that the organizations had plainly requested that **all employees** be given seven holidays off with pay each year.

The Emergency Board stated the following in connection with Issue 12:

"Summarizing the Board's conclusions concerning Issue 12 under Holidays, whenever one of the seven enumerated holidays falls on a work day of the work week of a regularly assigned hourly rated employee, he shall receive the pro rata rate of his position in order that his usual take-home pay will be maintained. As to monthly rated employees whose hourly rate is based on $169\frac{1}{2}$ hours per month, which is arrived at by deducting the seven days, the monthly pay shall be recomputed so it will be increased to include on an annual average the number of holidays that will ordinarily fall in the work days of a work week."

Attention is called to the fact that the Emergency Board specifically set forth that their recommendation as to paid for holidays was to be applicable to **regularly assigned employees**.

The record is plain therefore that the Emergency Board rejected the basis of applying paid for holidays to **all employees** and limited such application to regularly assigned employees.

When the parties wrote the agreement of August 21, 1954, they followed out exactly what the Emergency Board had recommended and they provided for holiday payments to **regularly assigned employees** and not to all employees.

The employees in appealing the claim for July 4, 1955 contended that Zimmerman was "a regularly assigned employee." (See carrier's exhibit B.) In appealing claim for September 5, 1955, they contended that Zimmerman "worked his regular work days preceding the following Labor Day." (See carrier's Exhibit C.)

The employees, therefore, recognize that Article II of the August 21, 1954 agreement is applicable only to **regularly assigned employees**.

There can be no question as to the fact that Zimmerman was **not** regularly assigned. He had asked to be used on any work which was available. His daily service cards were marked to show that he was working due to a regularly assigned employee being absent. Upon completion of tour of duty September 16, 1955, he performed no further service during the month of September as there were no vacancies to be filled to which his seniority entitled him.

Carrier's position in this case is fully supported by Award 2052, Docket 1886 of your Honorable Board wherein it was held "the claimants temporarily filled regular positions. The agreement of August 21, 1954 is clear in its provisions wherein it is stated that '* * * each **regularly assigned** hourly and daily rated **employee** shall receive eight hours' pay * * *' (Emphasis ours.) Thus, the agreement limits payment to regularly assigned employees and does not provide for payment to an employee who is temporarily filling a position."

Carrier's position is also supported by award in Case No. 16, Special Board of Adjustment No. 136 on this property, covering claims for holiday pay presented by The Order of Railroad Telegraphers, copy of which award is submitted as carrier's Exhibit D.

Carrier has shown that claimant was not a regularly assigned employee and that Article II of the August 21, 1954 agreement was applicable only to regularly assigned employees. Carrier submits that the claim is not supported by the rules and should be declined.

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.

The claimant was furloughed on March 14, 1954, and was not recalled to a regular position and became regularly assigned until October 27, 1955. Between March and October he worked as an extra in place of other employes who were absent. He claims holiday pay for July 4 and September 5, 1955.

We believe that the reasoning in Awards 2297 and 2169 is equally applicable to the facts in the instant case. There are no new or different facts in this case, therefore we know of no reason why the findings in Award 2169 should be upset or modified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2476

The majority in the instant findings refer to Award 2169. We dissented from that Award and are constrained for the same reasons to dissent from the instant findings and award.

The majority should have found here, as was found in Award 2173 that "claimant was a regularly assigned employe within the intent and meaning in Section 1 of Article II of the agreement of August 21, 1954 and therefore eligible to receive the benefits thereof."

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink