

**Award No. 2477**  
**Docket No. 2333**  
**2-NYC&StL-SMW-'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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the controlling agreements the Carrier improperly denied Sheet Metal Workers A. Gildone and N. A. Loomis holiday pay for Thanksgiving Day, November 25, 1954.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate Sheet Metal Workers A. Gildone and N. A. Loomis for the Thanksgiving Day, November 25, 1954, holiday for eight (8) hours at the pro rata rate.

**EMPLOYEES' STATEMENT OF FACTS:** A. Gildone and N. A. Loomis, hereinafter referred to as the claimants, were employed by the New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the carrier, as sheet metal workers at Conneaut, Ohio.

The claimants completed their apprenticeship November 4, 1954. They were furloughed effective at the close of the work day November 5, 1954. They were asked to and did sign a slip stating that they were available to work relief work on regularly assigned positions during the absence of regular occupants, in accordance with Article IV of the agreement of August 21, 1954.

A sheet metal worker, C. Soares, was off duty on account of sickness October 25 through November 30, 1954. Claimant Loomis was assigned to fill this vacancy. The assignment was first trick 7:00 A. M. to 12 Noon, 12:30 P. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday as rest days. At the close of this assignment Claimant Loomis worked other vacancies.

Sheet Metal Worker L. Gilmore was off duty because of personal injury November 9 through December 3, 1954. Claimant Gildone was assigned to work this vacancy beginning November 16 through December 3, 1954. This

Instead, the decision of Chief Mechanical Officer Pendy was appealed on its merits on July 28, 1955 to Director of Personnel Komarek (carrier's Exhibit L). Denial was made on the merits (carrier's Exhibit M). The employees continued to press the claim on its merits and further conference was requested and held on the merits (carrier's Exhibits N and O).

Failing to establish the merit of the claim and provide a precedent for similar payments, the employees belatedly (November 12, 1955) requested another conference (carrier's Exhibit P). At the conference held on November 28, 1955 (carrier's Exhibit Q), 120 days after the appeal of July 28, 1955, and having failed to establish the claim on its merits, the employees for the first time injected the question of and called the carrier's attention to the fact that Chief Mechanical Officer Pendy had failed to comply with the time limit provisions of Article V.

Thus, the failure on the part of Chief Mechanical Officer Pendy to comply with Article V occurred on or about May 5, 1955. Notwithstanding that failure, the employees entertained his denial of the claim on May 31, 1955, on its merits and appealed from his decision, again on the merits. Timely denial was made by the director of personnel of this final appeal. If the claim was to be progressed under Article V of the August 21, 1954 agreement, the employees should have so handled with Chief Mechanical Officer Pendy and in the event of his refusal to entertain the claim on that basis, timely appeal could then have been made to the director of personnel. But this was not done. As has been shown, it was not until November 28, 1955, or almost six months later, that the employees decided that in view of the fact that they had failed to establish the merit of the claim and had obtained final denial, they would then invoke the provisions of Article V.

If such a contention is now made on the part of the employees, it is totally without merit, as their actions constitute a waiver of such contention.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 the dispute were given due notice of hearing thereon.

The claimants were furloughed on November 5, 1954, and each applied for any extra work that might become available. They were employed to do relief work on regular positions due to the absence, because of sickness or injury, of the regular assigned employees. They worked the day preceding Thanksgiving Day, 1954 and claim that under Article II of the August 21, 1954 Agreement they are entitled to compensation for the holiday. They did not regain their status as regularly assigned hourly rated employees until late in the year 1955.

After examining the August 21, 1954 Agreement and several of the awards thereunder we conclude that the findings in Award No. 2169, wherein a similar claim was denied, properly interpret the language in the agreement. It seems to us that the language clearly applies to the employee who is regularly assigned to a position and not to the position or job itself. The claimants in this dispute were not regularly assigned to a position within the meaning of the agreement, and therefore did not qualify for Thanksgiving Day holiday pay in 1954.

## 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. 2477**

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 of Section I 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