

Award No. 2492

Docket No. 2328

2-MP-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2. RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied compensation to Car Helpers J. E. Yother and R. G. Hogue for Decoration Day, May 30th, 1955.

2. That accordingly the Carrier be ordered to compensate Car Helpers J. E. Yother and R. G. Hogue in the amount of eight (8) hours at the pro rata hourly rate for Decoration Day, May 30th 1955.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. E. Yother and Mr. R. G. Hogue, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as car helpers at McGehee, Arkansas.

On January 12, 1955, Car Inspector E. O. Turner, laid off due to illness. The carrier assigned Carman J. D. Cobb to fill the car inspector vacancy. Car Helper L. D. Averett was set up to fill the carman vacancy. Claimant Yother, who was furloughed, was recalled to work on January 12, 1955, and was assigned by the foreman to work as a car helper on the rip track from 7:00 A. M. to 4:00 P. M. Monday through Friday, rest days Saturday and Sunday.

On February 4, 1955, Claimant Hogue, who was also furloughed, was recalled to service to fill vacation relief assignments. On May 23, 1955, Car Inspector C. W. Bradley began his vacation. The carrier assigned Carman E. W. Burchfield to fill the car inspection vacation relief assignment. Car Helper F. Durey was set up to fill the carman vacancy. Claimant Hogue was assigned, on May 23, 1955, by the foreman to the regular assigned position of car helper on the 7:00 A. M. to 4:00 P. M. shift on the rip track, Monday through Friday, rest days Saturday and Sunday.

position was a regularly assigned employee within the meaning of Article II, Section 1, of said agreement. This contention was, of course, rejected by the carrier because the language involved reads "regularly assigned . . . employee" and does not refer to **position**. It matters not whether the position is a so-called permanent one, or one established as a temporary position—under the language of Article II, Section 1, the **employee** must be **regularly assigned** to a position.

This is not a case of first impression for your Board. In Docket No. 1886, involving a dispute between System Federation No. 97 and the Santa Fe Railway, it was contended that the claimants in that case were entitled to compensation for holidays falling on May 30 and July 4, 1954. The same article of the same agreement was urged in support of that claim as in the instant case. Your Board, with the assistance of Referee Douglass, in Award No. 2052, denied the claim and held as follows:

"This case, boiled down, presents one question for our determination. Were the claimants in the instant case 'regularly assigned' employees as contemplated by Section 1, Article II of the August 21, 1954 National Agreement and entitled to pay for holidays?

The claimants had both been laid off as a consequence of a reduction in force. Both were notified to and did fill vacancies of regularly assigned men who were on vacations.

The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein 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."

The burden of proof rests upon the employees in this case. See Second Division Award No. 1996 and Third Division Award Nos. 6402, 6650 and 6673, as well as numerous others in all Divisions of the N.R.A.B.

This claim should be denied because it is without agreement support.

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 said dispute were given due notice of hearing thereon.

Claimants Yother and Hogue were furloughed car helpers, who had been recalled and used to fill various short term vacancies of men who had been advanced to fill other vacancies of sick or vacationing employees. On Decoration Day 1955 they were in such status, worked, and were not paid any holiday allowance, which they now claim.

It is argued both pro and con that they were "regularly assigned hourly and daily rated employees" within the meaning of Article II, Section 1 of the August 21, 1954 Agreement.

The weight of authoritative precedent supports the carrier's position that claimants were not regularly assigned employees on the holiday. The claimants' personal status, on which their contractual right to holiday pay rests, was that of temporarily assigned not regularly assigned employees.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2492

We are constrained to dissent from the findings and award of the majority.

The instant claimants, by virtue of their seniority as carmen helpers, occupied regular positions within the terms of the controlling schedule agreement and, being regularly assigned hourly and daily rated employees receiving compensation for the days preceding and following the instant Holiday, they were qualified under Article II, Section 3, of the August 21, 1954 Agreement to be compensated as claimed.

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