Award No. 2604
Docket No. 2340
2-MeC-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

MAINE CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That Painter Helpers Joseph Banks, Jr. and Scott E. Hawes are entitled to be compensated in the amount of eight hours' pay each at the straight time rate for the holiday, Monday, September 5, 1955.

EMPLOYES' STATEMENT OF FACTS: Painter Helper William Fletcher was off duty until further notice on August 29, 1955, and furloughed Painter Helper Joseph Banks was called in on this day to cover William Fletcher's position while Fletcher was off duty.

Painter Helper Warren Underwood was off duty until further notice on August 15, 1955, and furloughed Painter Helper Scott E. Hawes was called in on this day to cover Warren Underwood's position while Underwood was off duty.

Painter Helper Joseph Banks, Jr. covered Painter Helper William Fletcher's job from August 29, 1955 to October 13, 1955—forty-eight days.

Painter Helper Scott E. Hawes covered Painter Helper Warren Underwood's job from August 15, 1955 to October 21, 1955—sixty-nine days.

Painter Helpers Joseph Banks, Jr. and Scott E. Hawes worked a full work week August 29 to September 2, 1955, inclusive, also September 6 to 9, inclusive, thereby qualifying for holiday pay under the August 21, 1954 agreement. Both of these painter helpers had Saturday and Sunday as rest days.

The carrier has proven:

1. The instant claim was progressed on the property on the basis of violation of Article II, Section 3 of the August 21, 1954 Non-Operating Agreement.

2. Rule 12, which the general chairman injected in his "Position" on an appeal basis, has no proper place in the instant claim and the general chairman so agreed.

3. There can be no violation of Article II, Section 3 of the August 21, 1954 Non-Operating Agreement until the requirements of Article II, Section 1 of the same agreement have been satisfied.

4. The claimants in the instant claim did not meet the requirements of Article II, Section 1 of the August 21, 1954 Non-Operating Agreement, as on September 5, 1955 (Labor Day) both were filling temporary vacancies—Mr. Hawes having worked but fifteen (15) days and Mr. Banks but five (5) days prior to Labor Day Holiday.

5. Both claimants were furloughed men called back to service in seniority order to fill temporary vacancies account regular incumbents off duty due to illness, all in accordance with the rules of the current agreement between the parties.

This claim should be denied and the carrier respectfully requests your Honorable Board so find.

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.

This is a claim on behalf of two (2) employes for holiday pay for Labor Day, September 5, 1955. The facts of the case are in dispute but it can be resolved from a consideration of those relied on by the organization.

On August 29, 1955 Painter Helper Fletcher went off duty and claimant Banks, a furloughed painter helper, was called to fill the vacancy. Banks served until October 15, a total of forty-eight (48) days, when Fletcher returned. Five (5) of these days were prior to Labor Day and forty-three (43) subsequent thereto.

Painter Helper Underwood likewise went off duty on August 15, and claimant Hawes, who was on furlough, filled the position until October 21, when Underwood returned. Hawes served sixty-nine (69) days, fifteen (15) before and fifty-four (54) after Labor Day.

Both Banks and Hawes worked the full work week, August 29 to September 2, inclusive. Both also worked from September 6 to 9, inclusive, and both had Saturdays and Sundays as rest days.

It is the theory of the organization that the carrier violated the agreement by its failure to bulletin the positions vacated by Fletcher and Underwood and that as a consequence Banks and Hawes acquired the status of regularly assigned employes, entitling them to holiday pay for Labor Day by virtue of Section I of Article II of the Agreement of August 21, 1954.

Paragraph 9 of Rule 12 of the effective agreement reads:

> "Vacancies of an indefinite duration will be bulletined as permanent positions after thirty (30) days from the date of creation. Known vacancies of more than thirty (30) days will be bulletined as soon as the facts are known."

In its original submission the organization asserted that Fletcher went off duty "until further notice" on August 29, and that Underwood went off duty "until further notice" on August 15; but in rebuttal it said that, "Both vacancies were known to be of more than thirty (30) days' duration." When or by whom this became known is not disclosed.

The quoted statements are most indefinite if, indeed, they are not actually conflicting. They warrant the conclusion, we think, that the vacancies were of "indefinite duration," within the meaning of Paragraph 9 of Rule 12.

That being true, the carrier had thirty (30) days within which to bulletin the positions for permanent assignment after the vacancies occurred. Meanwhile, Labor Day was well passed, and we find nothing in the agreements that could make subsequently acquired status as regularly assigned employes retroactive for the purpose of qualifying them for holiday pay. Even if the carrier did violate Rule 12 as was charged and as it apparently admits, this fact does not establish that the claimants were "regularly assigned" employes on Labor Day, 1955, within the meaning of Article II, Section 1, of the August 21, 1954 Agreement.

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 September, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2604

The findings of the majority to the effect that it is the theory of the organization that as a consequence of the carrier's failure to bulletin the instant positions the claimants acquired the status of regular assigned employes is not in accord with the facts set forth in the record. On page 2 of the employes' submission the General Chairman advises that "I stated that this claim was not progressed as a violation of Rule 12, even though Rule 12 was violated . . ." The General Chairman contended that since the claimants were assigned to cover vacancies they became regular assigned employes within the meaning of Article II, Section 1, of the August 21, 1954 Agreement.

There is no substance to the statement of the majority that "we find nothing in the agreements that could make subsequently acquired status as

regularly assigned employes retroactive for the purpose of qualifying them for holiday pay," inasmuch as the question of retroactivity is not involved since the claimants worked immediately preceding and following Labor Day. The majority attempts to justify a denial award by endeavoring to make Section 1 of Article II the section under which an employe must qualify for holiday pay instead of Section 3 of Article II which states "An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday . . ."

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink