Award No. 3147
Docket No. 2954
2-NYC-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

DISPUTE: CLAIM OF EMPLOYES:

1. That Carman A. Criado was unjustly dealt with when on May 30, 1955, a holiday (Decoration Day) he did not receive pro-rata rate.

2. That Carman K. Tijunelis was unjustly dealt with when on May 30, 1955 holiday (Decoration Day) he was not paid for 8 hours at pro-rata rate.

3. That Carman E. Perrotti was unjustly dealt with when on July 4th, holiday he was not paid pro-rata rate of pay.

4. That these three Carmen should be paid for these holidays at pro-rata rate eight (8) hours at the then prevailing rate of pay.

EMPLOYES' STATEMENT OF FACTS: A. Criado, K. Tijunelis and E. Perrotti, hereinafter referred to as the claimants, are employed by the New York Central System, hereinafter referred to as the carrier, as carmen at Nottingham, Ohio.

Claimant Criado was furloughed and called back to work on April 9, 1955. He was assigned to work in the train yard as a car inspector on the 3:00 P. M. to 11:00 P. M. shift, Sunlay through Thursday, with Friday and Saturday as rest days.

Decoration Day, May 30, 1955, a holiday, fell on a work day of claimant's work week. Claimant was required to render service on this holiday for which he was compensated at the time and one-half rate, but he did not

to the amount of work that is available to them. When the Emergency Board recommends that the adoption of a rule to maintain an employe's normal take-home pay, it is evidence that had the Board intended its recommendation to apply to unassigned or furloughed employes, as well as regularly assigned employes, it would not have used the limiting term "regularly assigned hourly rated employe" in its recommendation.

The language of Article II of the August 21, 1954 Agreement follows very closely the language used by the Emergency Board in its discussion and recommendations. It must, therefore, be presumed that all of the contentions and arguments of the parties were merged in the written agreement. Consequently, the language of Article II, Section 1, of the August 21, 1954 Agreement limits the application of the entire article to "regularly assigned employes". An employe failing to meet this one condition cannot qualify for holiday pay.

CONCLUSION: The carrier has demonstrated by the facts hereinbefore submitted that the claimants were not "regularly assigned" employes and that the controlling agreement limits the application of the holiday pay provisions to "regularly assigned hourly or daily rated employes".

Your Division has held in numerous awards that "regularly assigned" employes, as that term has been traditionally understood in the railroad industry, are the only employes covered by the provisions referred to in Section 1, Article II of the August 21, 1954 National Agreement. See your awards 2052, 2169, 2170, 2171, 2172, 2254, 2281, 2297, 2299, 2300, 2301, 2331, 2332, 2463, 2467, 2477, 2492, 2498, 2556, 2563, 2612 and 2696.

The Third Division, likewise, has rendered similar awards. See awards 7430, 7431, 7432, 7721, 7978, 7979, 7980, 7982, 8053, 8054, 8055, 8056 and 8058.

The claimants in this dispute were not regularly assigned employes and were in the same category as were the employes in the above awards. The claim should, therefore, be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

The carrier contends that claimants were recalled from furlough pursuant to Rule 1(k) and were not regularly assigned to positions pursuant to Rule 18 until after the holiday for which pay is claimed in each case. Evidence is presented that each worked the same assignments with the same carman partners from the time recalled until several months after assignment under Rule 18. Thus it appears that the carrier augmented its force of carmen in anticipation of vacation relief needs, that it did not comply with Rule 18 in doing so and that thereby the claimants must be considered

as though they were regularly assigned occupants of the positions held prior to and after the holidays involved.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.