

Award No. 3851
Docket No. 3613
2-GM&O-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

GULF, MOBILE & OHIO RAILROAD COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYEES:

1. A. That under the current agreement the carrier improperly failed to compensate Carman G. H. Turner, Jr. in the amount of eight hours at the straight time rate for each day, May 30, 1958 (Decoracion Day) and July 4, 1958 (Independence Day).

B. And that Carman Turner was improperly furloughed October 31, 1958 without being afforded the five days notice provided in the current agreement.

2. A. That the carrier be ordered to compensate said carman in the amount of eight hours at the straight time rate for each of the two holidays listed above.

B. And that the carrier be ordered to additionally compensate said carman in the amount of eight hours at the straight time rate for each day, November 1 and 4, 1958, that he would have worked if given the proper notice of furlough October 21, 1958.

EMPLOYEES' STATEMENT OF FACTS: Carman G. H. Turner, Jr., hereinafter referred to as the claimant, was employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Jackson, Tennessee. His assignment was on the first shift with rest days Sunday and Monday.

The claimant was the junior carman working at Jackson after he was called in to work February 1, 1958 in the absence of Carman J. F. Arnold, Arnold was the only carman absent from duty. Turner did not fill his position but took the last position to be filled.

agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the **employee who is regularly assigned to and on a position and not to the position or job itself**. Consequently an **employee who is only temporarily filling** such regular position would not be eligible to receive the benefits thereof. We find the claim should be denied." (Emphasis supplied.)

Also see similar findings in Award Nos. 2170, 2171, 2172, 2254, 2281, 2297, 2299, 2300, 2301, 2331, 2332, 2463, 2467, 2477, 2492, 2498, 2556, 2563, 2612 and 2696.

CONCLUSION

Article II, Section 1, is clear that **only** "regularly assigned employees are entitled to holiday payment under the rule. The last sentence of paragraph 2. Article IV, is equally clear that no advance notice before force reduction is necessary to furloughed employees performing relief work.

The undisputed facts are that during the period of the claim, Claimant Turner was relieving regularly assigned employees who were off because of illness or injury. Had these regularly assigned employees not been off during the period Claimant Turner would not have been used. Under such circumstances, he cannot be considered as a regularly assigned employee, but must be considered as a furloughed employee performing relief work.

The claim here made is contrary to the agreement and should 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 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.

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

Claimant, a furloughed employee, was recalled under Article IV, Section 1, of the Agreement of August 21, 1954, for relief work in the absence of Carman Arnold, a regularly assigned employee absent on account of illness. He served in that relief work from February 1 to October 21, 1958, when the position was abolished. His claim is for holiday pay for July 4th and Labor Day, and also for November 1 and 4, which he would have worked if given five days notice of furlough under Rule 29 of the current Agreement.

The Carrier points out that Article II of the August 21, 1954 Agreement provides holiday pay only for regularly assigned employees, and that Article IV of that agreement provides that furloughed employees used for relief work are not subject to rules requiring advance notice before reduction of force.

The Employees reply that Carman Gowan, who was junior to Claimant, was recalled from furlough to fill a position from which Carman Thomas was first suspended and then discharged, and until it was filled by the senior applicant after advertisement; that Article IV, Section 3, Note 3 of the August 21, 1954 Agreement provides that by performing relief work a fur-

loughed employe does not waive his right to a regular assignment becoming available; that upon Thomas' discharge Carman Arnold became the only regularly assigned employe absent, so that only one furloughed employe was needed for relief work under Article IV, and that therefore "the return of Carman Gowan to service automatically placed the Claimant in a regularly assigned status".

But Claimant was recalled for relief work during Carman Arnold's illness and his status never changed until the October 31 reduction of force. Gowan was recalled for relief work during Thomas' suspension. His temporary use in the latter position during advertisement after Thomas' discharge was not pursuant to Article IV, did not constitute a regular assignment, and effected no change in Claimant's relief status during Arnold's continued illness. Consequently, under the clear and unambiguous Rules, he was never, during that time, a regularly assigned employe so as to be entitled to holiday pay or advance notice before reduction of force.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3851

The majority is incorrect in stating that Claimant Turner's status never changed until the October 31 reduction of force. His status changed when Thomas was discharged and Gowan was called in as a relief employe—there was no reduction in force at that time and Turner, being senior to Gowan, automatically became a regularly assigned employe on the date Gowan was recalled to service as a relief employe. Thus Turner, being a regularly assigned employe, was entitled to Holiday pay and five days advance notice of reduction in force on October 31.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink