Award No. 3977
Docket No. 3817
2-IT-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES' DEPARTMENT, A. F. L.-C. I. O. (Machinists)

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That the Carrier violated the terms of the current agreement when it failed to compensate Machinist Helper Ted S. Berry eight (8) hours holiday pay for July 4, 1959.

2 — That the Carrier be ordered to compensate Machinist Helper Ted S. Berry an additional eight (8) hours pay at straight time rate for July 4, 1959.

EMPLOYES' STATEMENT OF FACTS: Ted S. Berry, hereinafter referred to as the claimant, is employed by the Illinois Terminal Railroad Company, hereinafter referred to as the carrier, as a machinist helper with seniority date of November 1, 1955.

The carrier maintains a Diesel Shop at Alton, Illinois, designated as Federal, and another shop at McKinley Junction, designated as Lang. Employes at both shops are on the same seniority roster.

The claimant was scheduled to be furloughed June 27, 1959, however, in anticipation of vacation relief needs he was not furloughed and worked as follows:

"Worked Job 416 — 6-26-59 thru 7/10/59
" " 415 — 7-13-59 " 9/11/59
" " 229 — 9-13-59 " 9/24/59
" " 415 — 9-28-59 " 10/12/59
Took his earned vacation 10-13-59 thru 10/26/59"

He worked and was compensated at the time and one-half rate for July 4, 1959, however, his request for an additional eight (8) hours straight time rate, holiday pay, has been handled and declined up to and including the highest designated official.

There was no permanent vacancy in the position occupied by Machinist Helper Berry. To the contrary, it was of a temporary nature and was worked by Berry until the return of the regular incumbent from his vacation.

There is no merit in the claim which the employes have presented and we respectfully request that it 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 waived right of appearance at hearing thereon.

Carrier furloughed Claimant from his regular assignment in reduction of force, but because of vacations and illnesses kept him employed for four months longer on four successive temporary relief assignments followed by his own two weeks' vacation. He did not actually continue to work his regularly assigned position from which he had been given notice of furlough, as in several awards relied upon by Claimant, but actually filled, on a relief basis, four separate and unrelated positions during the absence of their regularly assigned occupants; the first, which included July 4th, constituted vacation relief.

The Agreement does not provide for, and Claimant was not occupying, a regular relief position. The record does not indicate that Carrier violated any Rule or was guilty of any subterfuge or evasion in connection with any of Claimant's four separate temporary relief assignments, or that he actually continued to fill his old position, as in the awards above referred to.

"Regularly assigned" has a definite meaning. The Agreement contains numerous rules relating to "employes regularly assigned," and also rules relating to employes temporarily filling vacancies.

It is impossible to find that an employe who temporarily fills an assignment in the absence of the regularly assigned occupant is also regularly assigned to that position. Consequently Claimant did not qualify for holiday pay under Article II, Section 1 of the Agreement of August 21, 1954.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3977

The claimant was to be furloughed but never was, being retained in the service to augment the force as a vacation relief worker, therefor the claimant met the requirements of Section 3 of Article II of the National Agreement of August 21, 1954 by working the workdays of the position he occupies immediately preceding and following July Fourth. Article II, Section 1 of the August 21st Agreement provides in substance that when a holiday falls on a workday of the workweek of the employe, such employe shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which the employe is assigned. Employes who possess employment rights under the schedule agreement are entitled to the eight (8) hours' holiday pay whether they are working their regular assignment or whether they are working on temporary assignments whose workweek contains a holiday. Having qualified for holiday pay under the National Agreement of August 21, 1954, the claimant should receive the pay specified in that Agreement for holidays.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink