Award No. 2052
Docket No. 1886
2-AT&SF-BK-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Blacksmiths)

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement the Carrier did not compensate Blacksmith Paul L. Deringer and Blacksmith Helper R. O. Hughes for holidays falling on May 30, and July 4, 1954.

(2) That the Carrier be ordered to properly apply the agreement and compensate Claimants for the May 30, and July 4, 1954 holidays at pro rata pay as provided in the agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant Paul L. Deringer, with a seniority date of February 1, 1953, was employed as a blacksmith by The Atchison, Topeka & Santa Fe Railway Company, hereinafter referred to as the carrier, at its Newton Rail Mill, Newton, Kansas on the 12:00 midnight to 8:00 A. M. shift, Monday through Friday.

Claimant R. O. Hughes, with a seniority date of August 23, 1949, was employed as a blacksmith helper by the carrier at its Newton Rail Mill on the 12:00 midnight to 8:00 A. M. shift Monday through Friday.

Under date of May 3, 1954, a notice, over the signature of the superintendent Newton Rail Mill, Mr. P. L. Schultz, was posted advising the employes of the rail mill that certain positions, including those held by the claimant, will be abolished effective 7:00 A. M., Monday, May 10, 1954, resulting in both claimants being notified they were laid off as of that date. Submitted herewith is a copy of the notice, identified as Exhibit A, on which Claimants Deringer and Hughes' positions are shown as No. 73 and No. 78, respectively.

Claimant Deringer was directed to continue at work and to report for duty, as a blacksmith, on the 3:30 P. M. to 11:50 P. M. shift, Monday through Friday, on Monday, May 10, 1954, to fill the regular assignment of blacksmiths taking their vacations. Claimant Deringer worked continuously on this shift assignment from May 10, 1954, to June 7, 1954, inclusive, and he was laid off again on this date.

who were called in to work in the place of regular employes who were absent on vacation. Manifestly, Section 1 of Article II covers only hourly and daily rated employes who are 'regularly assigned' or who occupy a regular relief assignment.

Accordingly the claim must respectfully be denied."

POSITION OF CARRIER: The processing of this claim on the part of the organization apparently stems from the original request or proposal of the organizations concerning holidays as presented to the Emergency Board in Case N.M.B. A-4336. The first of four paragraphs in the proposal by the organizations concerning holidays as it appears in the report of the Emergency Board, follows:

"**All employees** shall be given seven holidays off with pay in each year. Those holidays, unless alternative designations are made on the individual carrier by agreement between such carrier and the representatives of the employees, shall include January 1, February 22, May 30, July 4, Labor Day, Thanksgiving Day, and December 25." (Emphasis ours)

Please note that the organizations' proposal specifically contemplated that all employes be given holidays off with pay. What was the reaction of the Board to that request? The Board said:

"Summarizing the Board's conclusions concerning * * * Holidays, whenever one of the seven enumerated holidays falls on a workday of the workweek of a **regular assigned** hourly rated employee, he shall receive the pro rata rate of **his position** * * *."

It is, therefore, perfectly clear from the language of the Emergency Board that the request of the organizations that all employes be paid for holidays was rejected and such payment limited to regular assigned hourly rated employes.

The carrier also desires to direct the Board's attention to Section 1, Article II of the August 21, 1954 Agreement, which specifically provides that "Effective May 1, 1954, each **'regularly assigned'** hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the 'seven recognized holidays when such holidays fall on a workday of the individual employe.' " The language of that section is unambiguous and clearly provides for payment to **"regularly assigned"** employes. The records clearly show that the claimants were actually furloughed on May 7, 1954, were out of service in force reduction but were recalled to fill the places of other employes and so used during the period May 10, 1954 and July 19, 1954 (in the case of Hughes) and July 30, 1954 (in the case of Diringer).

There can, therefore, be no gainsaying the fact that the claimants were not "regularly assigned" employes in the sense in which the language is used in Section 1, Article II of the August 21, 1954 Agreement, and obviously are not entitled to payment for the holidays May 30 and July 4. For these reasons, as well as those stated previously, the claim should be dismissed.

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 this dispute were given due notice of hearing thereon.

with the rules of the applicable agreement to fill a regularly established position.

The fact that it is anticipated that the assignment will be terminated upon the return of the usual incumbent is irrelevant. During the assignment the employe filling the position is nevertheless "regularly assigned." Should the usual incumbent be unable, as, for example through incapacitation or death, to resume the assignment, the employe who was "regularly assigned" to fill the position on what was thought to be a "temporary" basis would probably be "permanently" assigned—even though further force reductions might result in abolition of the position the next week.

The award completely confuses the distinction between "regularly assigned employes" and "extra employes" with that between "temporary" and "permanent" assignments. The drastic and sporadic nature of force reductions in the industry have made anything called a "permanent" assignment something of a misnomer. Still, so long as a regularly established job is there and it is filled by assignment of an employe who is entitled by seniority rights to be assigned to fill it that emloye is a "regularly assigned employe."

The opinion of the majority of the Board rests entirely on the theory that the agreement providing holiday pay grew out of an Emergency Board recommendation designed to maintain "normal" take-home pay of "regularly assigned employes"; from this premise it concludes that an employe whose prior position has been abolished and who is assigned pursuant to seniority rights to fill a regularly established position for a period expected to be of limited duration has no normal take-home pay and therefore is not within the reason for the holiday pay rule. The fallacy lies in ignoring the fact that the employe does have a normal take-home pay from the position for as long as he is filling it. If a holiday occurs during one of the weeks when he is filling the position and he is not paid for the holiday, he suffers the same loss of normal take-home pay as he would if he were "permanently" assigned to a job that was going to be abolished the following week.

One of the most universally accepted rules of the railroad industry is that any employe assigned to fill a job takes the conditions of that job for the time he is filling it. Irrespective of whether a specific rule of the agreement so specifies, that rule is observed—as it should be under general principles of contract law. This award subverts it.

Charles E. Goodlin
R. W. Blake
T. E. Losey
Edward W. Wiesner
George Wright