Award No. 2169

Docket No. 2039

2-SLSF-BM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Boilermakers)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Boilermaker Harvey Mack was improperly denied 8 hours' compensation at the straight time applicable rate for Labor Day, September 6, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid Boilermaker in the amount of eight hours pay at the applicable straight time rate for the aforementioned date.

EMPLOYES' STATEMENT OF FACTS: Boilermaker Harvey Mack, hereinafter referred to as the claimant, is employed by the St. Louis-San Francisco Railroad Company, hereinafter referred to as the carrier, at their West Locomotive shop in Springfield, Missouri, where they employ one shift of employes with a work week of Monday through Friday, with rest days of Saturday and Sunday. Boilermaker Ben F. Rose was off injured and the claimant, who was furloughed was called back to fill the assignment of Rose until he was able to return to the service.

The claimant worked September 3 and 7, 1954, the work day prior and subsequent to the holiday, September 6, 1954. The claimant was not assigned to work the holiday, September 6, 1954.

The carrier failed to compensate the claimant in the amount of eight hours' pay at the straight time applicable rate for September 6, 1954.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement, effective January 1, 1945, as subsequently amended, is controlling.

agreement where the rule limits holiday pay to regularly assigned hourly and daily rated employes. There is no difference in the meaning of the words between the two agreements.

The organization in its May 22, 1953 proposal sought a rule which would have given all employes seven holidays off with pay in each year, and having been unsuccessful in securing such a rule through the collective bargaining processes of the Railway Labor Act, they are here seeking to achieve that aim by Board award in the guise of an interpretation of an agreement rule.

The claim is wholly unsupported by agreement rules, without merit, and this Division is requested to 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 respectfully 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.

The claim is that Boilermaker Harvey Mack was improperly denied eight (8) hours' compensation at the applicable straight time rate for Labor Day, September 6, 1954.

Claimant was employed as a boilermaker by carrier at its West Locomotive Shop in Springfield, Missouri. As a result of a reduction in forces claimant was furloughed on September 18, 1953. Boilermaker Ben F. Rose had been assigned to a regular position of boilermaker at this point but was injured and off duty because thereof commencing July 1, 1954. Claimant was called and used to fill Rose's regular position from August 10, 1954 to October 29, 1954, when Rose returned to duty. Mack did not work on Monday but did on Friday, September 3, 1954, and on Tuesday, September 7, 1954, the workdays of the position being Monday through Friday. Thus claimant qualified for holiday pay on Labor Day under Section 3 of Article II of the National Agreement dated August 21, 1954 if he was eligible therefor under Section 1 of said Aritcle II, which provides so far as here material 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 following enumerated holidays (which includes Labor Day) when such holiday falls on a workday of the workweek of the individual employe."

To better understand the meaning of the foregoing rule we think a review of the background out of which it developed is important. On May 22, 1953 the Railway Labor Organizations representing the nonoperating employes presented to the carriers a proposal that all employes they represented should be given seven holidays off in each year with pay. At that time, for most of the employes concerned, holidays were recognized but no compensation was received therefor except when worked. If worked they were then paid time and one-half and such is still true for the hours of service performed thereon.

Emergency Board No. 106, to which this proposal and others were submitted, made certain recommendations in regard thereto. Subject to certain limitations therein outlined, the Board felt it would be appropriate for the hourly rated non-operating employes to receive straight time compensation for any of the seven holidays therein mentioned when any of such holidays should fall on any of the workdays of their work week. In reaching this conclusion the Board was strongly influenced by the desirability of making it

possible for such employes to maintain their normal take home pay in weeks during which a holiday occurs. The Board concludes that whenever one of the seven enumerated holidays should fall on a workday of the work week of a regular assigned hourly rated employe, he should receive the pro rata rate of his position in order that his usual take home pay would be maintained, and so recommended. It was on the basis of this recommendation that Section 1 of Article II of the August 21, 1954 Agreement was based. We think the language used, both in the Board's recommendation and in the agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof. We find the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1956.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2169, 2170, 2171 AND 2172

The decision in these cases turns on whether the claimants were "regularly assigned employes" within the meaning of the August 21, 1954 Agreement at the time the holidays occurred for which they claim holiday pay. It is admitted that they met all other conditions for entitlement to holiday pay. Claimants were assigned under seniority rights to fill regularly established positions.

These awards, if they were accepted as defining "regularly assigned employe" as used in the Agreement of August 21, 1954, would rob the agreement of much of its substance. The term "regularly assigned employe" was used in that agreement only to exclude from the holiday pay rule those individuals who might under the rules of various agreements be hired from time to time to do extra work not embraced in the positions to which employes were regularly assigned. It had nothing whatever to do with the permanence of an assignment of an employe to fill a regularly established position.

It is not our purpose to delineate precisely the full scope of the term "regularly assigned employe" under the varying rules of the several crafts who were parties to the August 21, 1954 Agreement. But it must at least include an employe who pursuant to seniority rights is assigned in accordance 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 awards completely confuse the distinction between "regularly assigned employes" and "extra employes" with that between "temporary" and "permanent" assignments. The drastic and sporadic nature of force reduc-

tions 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 employe 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. Awards 2169, 2170, 2171 and 2172 subvert it.

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