Award No. 2172
Docket No. 2074
2-SLSF-MA-'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.**

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## PARTIES TO DISPUTE:

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

## ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current agreement Machinist Frank Bertina was improperly denied eight (8) hours compensation at the applicable straight time rate of pay for Labor Day, September 6, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid Machinist in the amount of eight (8) hours pay at the applicable straight time rate for the aforementioned date.

**EMPLOYES' STATEMENT OF FACTS:** Machinist Frank Bertina, hereinafter referred to as the claimant, is employed by the St. Louis-San Francisco Railway Company, hereinafter referred to as the carrier, at Kansas City, Missouri. The claimant was used to fill the position of Machinist Ralph Fyfe, who was off on his annual earned vacation during the period August 23, 1954, and September 10, 1954. The position filled had a work week of Monday through Friday, with rest days of Saturday and Sunday. The claimant was not assigned to work September 6, 1954, but did work September 3 and 7, 1954.

The carrier declined to compensate the claimant in the amount of eight (8) hours pay at the applicable straight time rate.

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.

**POSITION OF EMPLOYES:** It is submitted that the facts above reflect that under the provisions of Article II, Sections 1 and 3, of the August 21, 1954 agreement, reading as follows:

The 40-Hour Work Week agreement clearly distinguishes extra, unassigned or furloughed employes from regularly assigned employes and the same distinction is apparent in Article II, Section 1, of the August 21, 1954 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 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 said dispute were given due notice of hearing thereon.

The claim is that Machinist Frank Bertina was improperly denied eight (8) hours of compensation at the applicable straight time rate for Labor Day, September 6, 1954.

Claimant was employed by carrier at Kansas City, Missouri. Because of a reduction in forces he was furloughed on March 20, 1954. Subsequently he was used to temporarily fill the position held by Machinist Ralph Fyfe while the latter was off on his annual vacation. Fyfe's regular position had a tour of duty from Monday through Friday. While temporarily occupying this position claimant worked on Friday, September 3, and on Tuesday, September 7, but not on Monday, September 6. Thus claimant qualified for pay on Monday (Labor Day), September 6, 1954 under Section 3 of Article II of the National Agreement of August 21, 1954 and was entitled to receive such pay provided he was eligible therefor under Section 1 of Article II thereof.

This identical question was presented in our Docket 2039 on which our Award 2169 is based. What was held therein is here controlling.

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 reduction 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 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 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**