

**Award No. 2281**

**Docket No. 2149**

**2-MP-FO-'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. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the controlling agreements the Carrier improperly denied Laborer Rosie Lee Glover holiday pay for Thanksgiving Day, November 25, 1954.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate Laborer Rosie Lee Glover for the Thanksgiving Day, November 25, 1954, holiday for eight (8) hours at the pro rata rate.

**EMPLOYEES' STATEMENT OF FACTS:** Rosie Lee Glover, hereinafter referred to as the claimant, entered the service of the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, on November 19, 1944, as a laborer at Gurdon, Arkansas. The claimant was furloughed on May 15, 1953.

On November 8, 1954, the claimant was directed by the carrier to fill the vacancy in the regular assigned laborer's position, the scheduled hours of which were 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., work week Monday through Friday with rest days of Saturday and Sunday. The vacancy was due to the absence of Laborer Dave Berry who was off because of illness.

The claimant worked her regular assigned shift on November 24 and 26, 1954, the work days immediately preceding and following the holiday.

Thursday, Thanksgiving Day, November 25, 1954, fell on a work day of the assigned work week of the claimant. The carrier did not require the claimant to work on the holiday and the carrier further denied the claimant holiday pay for the holiday.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

position with a work week within which a holiday falls, there are still other conditions provided in Section 3 of Article II which must be met before becoming entitled to holiday allowance for **not** working.

Perhaps the carrier should remind your Board that the employees have the burden of proving that Claimant Glover was a regularly assigned employee on November 25, 1954 and that she also met the other conditions precedent to establishing a right to holiday allowance for not working. See Second Division Award No. 1996 and Third Division Award Nos. 6402, 6650 and 6673 and numerous others.

Without relieving the employees of the burden of proof, the carrier again states that Claimant Glover was not a regularly assigned employee at any time during the period November 15, 1954 to and including Thanksgiving Day, November 25, 1954, said date being the holiday involved. During said period, she was filling a temporary vacancy account of the absence of a regularly assigned employee because of illness, and had no right to any position; therefore could not have been regularly assigned prior to November 25, 1954. Upon the return of Laborer Dave Berry from absence because of illness, he resumed on his own regular position as laborer on the repair track at Gurdon, and Claimant Glover was no longer used on said position.

For your Board's interpretation of Article II, Section 1 of the agreement of August 21, 1954, please be referred to Award No. 2052 of the Second Division, made with the assistance of Referee David R. Douglass, denying a similar claim for holiday allowance for **not** working, which held as follows:

"This case, boiled down, presents one question for our determination. Were the claimants in the instant case 'regularly assigned' employees as contemplated by Section 1, Article II of the August 21, 1954 National Agreement and entitled to pay for holidays?

The claimants had both been laid off as a consequence of a reduction in force. Both were notified to and did fill vacancies of regularly assigned men who were on vacations.

The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein is stated that '\* \* \* each **regularly assigned** hourly and daily rated **employee** shall receive eight hours' pay \* \* \*.' (Emphasis ours) Thus, the agreement limits payment to regularly assigned employees and does not provide for payment to an employee who is temporarily filling a position."

This claim should be denied because it is without agreement support.

**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 respectfully 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.

The parties to said dispute were given due notice of hearing thereon.

Rosie Lee Glover contends he is entitled to holiday pay for Thursday, Thanksgiving Day, November 25, 1954, under Article II, Section 1, of the August 21, 1954 National Agreement and that carrier refuses to pay him therefor. Consequently he asks that we require carrier to do so, that is, for 8 hours of pay at the applicable straight time rate.

Claimant entered the services of this carrier as a laborer on October 19, 1944, at Gurdon, Arkansas. On May 15, 1953, he was laid off by reason

of a force reduction. Laborer Dave Berry, with a seniority date of March 9, 1943, was regularly assigned to a job of repair track laborer on the repair tracks at Gurdon but, because of sickness, laid off commencing Friday, November 12, 1954. Carrier then used claimant to fill this vacancy. This was permissible and proper under the provisions of the parties' memorandum of agreement dated June 20, 1949. Claimant worked the position from Monday, November 15, 1954, until Monday, January 31, 1955, when Berry returned to work and took over his job. The work days of this job were Monday through Friday, with Saturday and Sunday as rest days. The daily tour of duty (shift) was from 8:00 A. M. to 12:00 noon and from 1:00 P. M. to 5:00 P. M.

Claimant worked the regular hours of the shift on Wednesday, November 24, and on Friday, November 26, thus qualifying for holiday pay on Thursday (Thanksgiving Day), November 25, 1954, under Section 3 of Article II of the agreement of August 21, 1954, if he was eligible therefor under Section 1 of said Article II.

Rules of the parties' agreement do not require that the positions of "Repair Track Laborers" be bulletined. See Rules 14 and 11(b)(C). Consequently Berry did not bid in nor was he assigned to his job by bulletin. But employes can be regularly assigned to and occupy a position or job without it being bulletined. Such is the situation here, for Berry was regularly assigned to and occupied the job on which claimant temporarily worked while Berry was off sick.

We have held that Section 1 of Article II of the agreement of August 21, 1954, applies to an employe who is regularly assigned to and on a regular position or job and not to the position or job as such. See Award 2169 of this Division. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefit thereof. That is claimant's situation.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.

#### DISSENT OF LABOR MEMBERS TO AWARD No. 2281

The majority in the instant findings refer to Award 2169. We dissented from that Award and are constrained for the same reasons to dissent from the instant findings and award.

The majority should have found here, as was found in Award No. 2173, that "the claimant was a regularly assigned employe within the intent and meaning of Section I of Article II of the Agreement of August 21, 1954 and therefore eligible to receive the benefits thereof."

George Wright

R. W. Blake

C. E. Goodlin

Edward W. Wiesner

T. E. Losey