Award No. 2297
Docket No. 2113
2-MP-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied compensation to Carman B. E. Ford for New Year's Day, January 1, 1955.

2. That accordingly the Carrier be ordered to compensate Carman B. E. Ford in the amount of eight (8) hours at the pro rata hourly rate for January 1, 1955.

EMPLOYES' STATEMENT OF FACTS: Carman B. E. Ford, hereinafter referred to as the claimant, entered service of the carrier on December 14, 1954 due to increase in force at Union Station, Little Rock, Arkansas.

The claimant, by direction of the carrier, upon entering the service, was assigned to the position of coach carpenter on the first shift 7:00 A. M. to 3:00 P. M., work week Monday through Friday, rest days Saturday and Sunday. This position was bulletined, under Rule 13(a) and bid in by J. M. Pulliam, who was assigned by bulletin.

The claimant, again by direction of the carrier, was assigned to the position of carman, vacated by Mr. Pulliam, on the third shift 11:00 P. M. to 7:00 A. M., work week Sundey through Thursday, rest days Friday and Saturday. This position was bulletined, under Rule 13(a) and bid in by R. A. Williams, who was assigned by bulletin.

On December 27, 1954, the claimant was, again by the direction of the carrier, assigned to the position of carman, vacated by Mr. Williams, on the second shift, 3:00 P. M. to 11:00 P. M., work week Friday through Tuesday, rest days Wednesday and Thursday. This position was bulletined, under Rule 13(a) and bid in by the claimant, who was assigned by bulletin.

The claimant was required by the carrier to render service in accordance with his regular assigned work week on January 1, 1955, holiday, for

POSITION OF CARRIER: It is the position of the carrier that Claimant B. E. Ford was not a regularly assigned employe on January 1, 1955, and this fact is conclusively established by advertisement bulletin, bid and assignment bulletin quoted in paragraph 3 of carrier's statement of facts in this submission. This being the fact, Article II, Section 1 of the agreement of August 21, 1954 does not require the carrier to compensate Claimant Ford for **not** working on New Year's Day, January 1, 1955, one of the recognized holidays under effective agreements.

During discussion of this and similar claims on the property, the employes contended that any man working and subject to the direction of the carrier was a regularly assigned employe. This contention was, obviously, contrary to carrier's interpretation of the language "each regularly assigned hourly and daily rated employe—" appearing in Article II, Section 1 of the agreement of August 21, 1954.

Thereafter, the employes contended that an employe temporarily filling a vacancy for even one day on a regular position was a regularly assigned employe within the meaning of Article II, Section 1 of said agreement. This contention was, of course, rejected by the carrier because the language involved says "regularly assigned—employe" and does not refer to position. It matters not whether the position is a permanent one or a temporary one—under the language of Article II, Section 1, the **employe** must be **regularly assigned** to a position.

Now your Board will recognize that an employe, such as Claimant Ford, under the facts here involved, who is working first on one position and then another on a catch-as-catch-can basis does not own a position; consequently cannot be considered as a regularly assigned employe, which is the condition precedent to having the provisions of Article II applied to him in the first instance. Even where employes **are** regularly assigned to a 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 employes have the burden of proving that Claimant Ford was a regularly assigned employe on January 1, 1955, and that he 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 employes of the burden of proof, the carrier again states that Claimant Ford was not a regularly assigned employe at any time during the period December 14, 1954, to January 3, 1955, the latter date being the date Assignment Bulletin No. 178 was issued, assigning Claimant B. E. Ford to a temporary position advertised on December 27, 1954 on which he placed his bid on December 28, 1954. During said period, he was riding bulletins and filling temporary vacancies account of the absence of regularly assigned employes, and had no right to any position; therefore could not have been regularly assigned prior to January 3, 1955.

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 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.

On December 14, 1954, claimant was employed as a carman to fill temporary vacancies at Little Rock, Arkansas. From December 14, 1954 to January 3, 1955, he was used on temporary positions pending their regular assignment by bulletin. He had no regularly assigned position of his own until January 3, 1955, when he was the successful bidder on a Carman's position at Little Rock Union Depot. Claimant worked on January 1, 1955, and was paid at the time and one-half rate. He claims he should be paid the holiday pay of 8 hours at the pro rata rate in addition thereto. The dispute involves Article II, Section 1, Agreement of August 21, 1954, which provides in part:

"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 when such holiday falls on a workday of the workweek of the individual employe: New Year's Day * * *."

The record clearly shows that claimant was not regularly assigned to any position on January 1, 1955. He is not, therefore, within the scope of Article II, Section 1, Agreement of August 21, 1954. The term "regularly assigned" has a well defined meaning in the railroad industry. A regularly assigned employe is one who has been assigned a regular position with regularly assigned hours, a fixed rate of pay, and an indefinite tenure as long as the job exists. It is used to exclude unassigned, extra and furloughed employes. Claimant, for instance, owned no regular position. He was riding bulletins on temporary assignments and, not owning a regular assignment, does not qualify for the 8 hours holiday pay at the pro rata rate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2297

The majority states that claimant was used on temporary positions pending their regular assignment by bulletin and states that since claimant was not regularly assigned to a position at the time the instant dispute arose he is not within the scope of Article II, Section 1, Agreement of August 21, 1954.

First, the majority is in error in stating that the claimant was being used on temporary positions. On the dates in question claimant was filling a vacancy caused by the former occupant thereof having been assigned to fill another vacancy. That the position was not a temporary one is further evidenced by the fact that it was bulletined in accordance with Rule 13 (a) which prescribes in part:

". . . vacancies in the respective crafts will be bulletined . . ."

The majority in reaching its conclusion thus ignores the fact that the claimant was filling a "regular position," formerly held by an employe who bid on another vacancy. The position filled by claimant was subsequently filled in accordance with the seniority provisions prescribed by the terms of the controlling agreement. In fact, the claimant himself bid on the job and,

since no older employes in point of service bid on the job, claimant was awarded the job.

The claimant was employed as a junior carman pursuant to the schedule agreement governing the employment of carmen and the record shows that the claimant was a regularly employed hourly rated passenger carman paid in accordance with the rates of pay for that classification, as shown on page 59 of the controlling agreement.

Since the claimant was a carman subject to the controlling agreement and occupied a regular position within the terms of said agreement on the dates in question, he was a regularly assigned employe within the intent and meaning of Section 1 of Article II of the Agreement of August 21, 1954 and therefore eligible to receive the benefits thereof.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

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