Award No. 2299
Docket No. 2166
2-AT&SF-MA-'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. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L., (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreements the Carrier improperly denied Machinist M. Martinez holiday pay for Decoration Day, May 30, 1955.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate the above-named Machinist for the Decoration Day, May 30, 1955, holiday for eight (8) hours at the pro-rata rate.

EMPLOYES' STATEMENT OF FACTS: M. Martinez, hereinafter referred to as the claimant, is employed by the Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, as a machinist at the Albuquerque Centralized Work Equipment Shop, Albuquerque, New Mexico.

On April 30, 1955, the carrier granted Machinist J. E. Loveless, also employed at the Albuquerque Centralized Shop, a sixty day sick leave. The carrier's local management did not bulletin the vacancy and as a consequence thereof the employes requested and sought to have the vacancy of Machinist Loveless bulletined on May 10, 1955, which the carrier's local management refused to do. The employes appealed the decision to Mechanical Superintendent A. J. Hartman with the result that Machinist Loveless' vacancy was bulletined on May 26, 1955.

The claimant being on furlough at the time was recalled to the carrier's service on May 26, 1955. The claimant reported for duty on May 27, 1955, and was assigned by the carrier to fill the vacancy of Machinist Loveless pending the expiration of the bulletin.

Claimant worked this position on Friday, May 27, 1955, and, since the assigned work week of the Centralized Work Equipment Shop is Monday

"This case, boiled down, presents one question for our determination. Were the claimants in the instant case 'regularly assigned' employes 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 Presidential Emergency Board's recommendation was to the effect that regularly assigned employes should be able to maintain their regular amount of take home pay and still have the benefit of holidays. Employes who hold no regular assignments do not have a regular or usual amount of take home pay. Their work is dependent upon the occurrence of temporary vacancies, or work of a temporary nature.

In the instant case the claimants have been removed from their regular assignments as the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employes. Following the claimants' separation from their regularly assigned positions, their take home pay from thence forward became irregular—dependent upon work of a temporary nature when such existed.

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

AWARD

Claim Denied"

It is the position of carrier that what was said by the Board in Second Division Award No. 2052 applies with equal force and effect to the instant case, and respectfully requests that the claim of the employes be denied in its entirety.

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.

Claimant is employed by the Carrier as a Machinist at the Albuquerque Centralized Work Equipment Shop at Albuquerque, New Mexico. On April 30, 1955, Machinist J. E. Loveless was granted a 60 day sick leave. Carrier did not immediately fill or bulletin the vacancy. Employes contended that the 60 day vacancy should be bulletined and Carrier on May 26, 1955, proceeded to bulletin it. Claimant who was on furlough at that time, was recalled to service and assigned on May 27, 1955, to fill the vacancy pending the expiration of the bulletin. Claimant worked Friday, May 27, Tuesday, May 31, and Wednesday, June 1. On June 2, 1955, the senior bidder, Machinist Gonzales,

was assigned to the bulletined vacancy. Claimant was then assigned to the vacancy in the position vacated by Gonzales. At the expiration of the bulletin, claimant was assigned to fill that position as of June 8, 1955. Claimant was not paid the 8 hours at the pro rata hourly rate for the holiday, May 30, 1955, and the present claim is for that amount. The Organization relies on Article II, Section 3, Agreement of August 21, 1954, which provides:

> "An employe shall qualify for the holiday pay provided in Section I hereof if compensation paid by the Carrier is credited to the work days immediately preceding and following such holiday. If the holiday falls on the last day of an employe's work week, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday."

The record shows that claimant met the requirements of Article II, Section 3, Agreement of August 21, 1954. The question is, however, whether or not claimant was a "regularly assigned" employe within the meaning of 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: * * * Decoration Day * * *."

Claimant was not a regularly assigned employe on the date of the claim. He was temporarily filling a position pending the expiration of the bulletin and the assignment of the successful bidder. While it is true that Claimant became the owner of a regular assignment on June 8, 1955, he was not the owner of a regular assignment on May 30, 1955, and consequently he was not a regular assigned employe on that day within the meaning of Section 1, Article II.

The following awards sustain this conclusion: Awards 2052, 2169, 2170, 2171, 2172, Second Division; Awards 7430, 7431, 7432, Third Division.

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. 2299.

The decision in this case 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. Both claimants had had their former jobs abolished and were assigned under seniority rights without interruption of work to fill regularly established positions during the vacancy of the usual incumbents of those positions.

This award, if it 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 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 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. This award subverts it.

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