**Award No. 2301**
**Docket No. 2245**
**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.**

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## 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 E. A. Scharfenburg for New Year's Day, January 1, 1955.

2. That accordingly the Carrier be ordered to compensate Carmen Scharfenburg in the amount of eight (8) hours at the pro rata hourly rate for New Year's Day, January 1, 1955.

EMPLOYES' STATEMENT OF FACTS: Mr. E. A. Scharfenburg, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a carman. On December 21, 1954, the claimant was transferred from the North Little Rock Shops to the Union Station, Little Rock, Arkansas, as a regular employe.

By direction of the carrier the claimant was assigned to fill a regular coach carpenter's position on the 7:00 A. M. to 3:00 P. M. shift, work week Tuesday through Saturday, rest days Sunday and Monday. This position was bulletined under Rule 13 (a), and bid in by Carman A. M. Summers, who was assigned by bulletin.

The claimant, again by the direction of the carrier, was assigned to the position vacated by Mr. Summers, on the third shift, 11:00 P. M. to 7:00 A. M., work week Tuesday through Saturday, rest days Sunday and Monday. This position was bulletined under Rule 13 (a). No one filed a bid for this position and as a consequence thereof, the carrier, by bulletin, assigned the claimant to said position.

The claimant was required by the carrier to render service in accordance with his regular assigned work week on January 1, 1955, holiday, for which he was compensated at the time and one-half rate in accordance with Rule 3 (a), and Bulletin 180, referred to above, shows that the bids expired on December 31, 1954 at 4:00 P. M.; however, due to no clerical force working

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. See Second Division Award No. 2052.

Perhaps the carrier should remind your Board that the employes have the burden of proving that Claimant Scharfenburg 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 Scharfenburg was not a regularly assigned employe at any time during the period December 21, 1954 to January 3, 1955, the latter date being the date Assignment Bulletin No. 180 was issued, assigning Claimant E. A. Scharfenburg to a position advertised on December 27, 1954; no bids having been received. 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.

Claimant was a furloughed Coach Carpenter who held his seniority at the North Little Rock Coach Shop. On December 21, 1954, he was employed as a Coach Carpenter at Little Rock Union Station and was used to ride a bulletin on a vacant position pending bids. On December 27, 1954, the successful bidder was assigned to the position and claimant was then used to fill the position vacated by the successful bidder pending its advertisement. No bids were received on this position and on January 3, 1955, claimant was regularly assigned to it. The claimant contends that he is entitled to 8 hours holiday pay for January 1, 1955, under the provisions of the agreement of August 21, 1954. The controlling portion of that agreement provides:

> "Effective May 1, 1954, each regularly assigned 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 employes: New Years Day. * * *"

Claimant was not a regularly assigned employe on the day for which claim is made. He was filling a temporary position pending the expiration of the bulletin and the assignment of the successful bidder. He was not the owner of a regularly assigned position on January 1, 1955, and did not become the occupant of such a position until January 3, 1955. He does not, therefore, come within the scope of the quoted rule. Seee Awards 2052, 2169, 2170, 2299 and 2300.

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 AWARDS Nos. 2300 and 2301**

The majority, in finding that claimant was not a regularly assigned employe on the date of the claim, ignores the fact that claimant was transferred to the instant seniority point under Rule 23(a) and, in accordance with Rule 23(b) acquired "seniority at the point to which transferred from the date" he commenced work thereat.

Furthermore, the majority is in error in stating that the claimant was filling a temporary position. 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 facts that it was bulletined in accordance with Rule 13(a) which prescribes in part:

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

The record shows that the claimant was transferred in accordance with Rule 23(a) of the controlling schedule agreement because he was needed to fill a regularly assigned position vacated because the former occupant thereof had bid on another vacancy.

Since the claimant was occupying a regular position within the terms of the controlling schedule agreement on the date 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