Award No. 2331
Docket No. 2221
2-SP(PL)-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.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPPLOYES' DEPARTMENT, A. F. of L. (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated Section 1, Article II—Holidays—of Agreement signed at Chicago, August 21, 1954, by declining to allow Machinist Helper Eugene Tittensor, Ogden, Utah, eight (8) hours pay at the pro rata rate for Washington's Birthday Holiday, February 22, 1955.

2. That accordingly the Carrier be ordered to additionally compensate Machinist Helper Eugene Tittensor in the amount of eight (8) hours compensation at the pro rata rate, for February 22, 1955, in accordance with agreement provisions referred to hereinabove.

EMPLOYES' STATEMENT OF FACTS: Eugene Tittensor, hereinafter referred to as the claimant, is employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, as a machinist helper at the carrier's shops located at Ogden, Utah.

Claimant was furloughed in reduction of forces on January 1, 1954, was recalled to service and reported for work on February 2, 1955.

On being recalled to service claimant was assigned by the carrier to work on the diesel pit. He was placed on a regular established position, with hours of service 7:00 A. M. to 3:00 P. M., rest days Tuesday and Wednesday. He was subsequently moved by the carrier to another assignment with the same hours of service, having rest days of Thursday and Friday, which assignment he was working on February 22, 1955.

The assignment claimant was working on February 22, 1955, was bulletined to work on holidays, as are all running repair assignments at the Ogden Shops.

Claimant reported for work, and did work on February 22, 1955, which was a work day of the work week of the regular assignment the carrier had assigned him to work.

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 had 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."

The petitioner in this case is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists.

CONCLUSION

The carrier asserts that it has conclusively established that the claim is without basis under the provisions of Section 1, Article II, of agreement dated August 21, 1954, and it is requested that said claim be denied.

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.

Having qualified under Section 3 of Article II of the National Agreement of August 21, 1954, Machinist Helper Eugene Tittensor contends carrier violated Section 1 of Article II of the foregoing agreement by not paying him for eight (8) hours at the pro rata rate applicable for Washington's Birthday, a holiday falling on Tuesday, February 22, 1955, which was a workday of the work week of the position he was then occupying. The relief asked is that we direct carrier to do so.

Claimant was employed by carrier in its shop at Ogden, Utah as a boilermaker helper. As of January 1, 1954 he was furloughed as a result of a

reduction in force. However, as of February 2, 1955, he was recalled, reported and returned to carrier's service as a machinist helper and assigned to work in its Diesel pit. On February 17, 1955 carrier bulletined, among others, a regular position of relief toolroom attendant in the Ogden shop with rest days of Thursday and Friday. Pending its being bulletined and assigned claimant was used to fill it and did so until February 24, 1955 when B. Lewis, the successful bidder, was regularly assigned thereto. The holiday, for which claim is here being made, fell during the period of time claimant was being so used.

By Award 2169 of this Division, Section 1 of Article II of the National Agreement of August 21, 1954, was held to apply only to employes regularly assigned to regular positions or jobs and not to the position or job itself and, consequently that an employe not regularly assigned within the meaning thereof, who is temporarily filling a regular position, would not be eligible to receive the benefits thereof. By Awards 2297, 2299 and 2300 of this Division it was held that an employe not regularly assigned but being used to temporarily fill a regular position while it is being bulletined and the successful bidder assigned thereto is not entitled to the benefits thereof. The latter is the situation here.

In view of the foregoing we find the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2331 AND 2332.

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