Award No. 2494
Docket No. 2330
2-MP-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied compensation to Carmen Helpers T. L. Vickers, J. J. Stewart and G. E. Hunt for November 25, 1954, Thanksgiving Day.

2. That, accordingly, the Carrier be ordered to compensate the aforenamed employes in the amount of eight (8) hours at the pro rata hourly rate for Thanksgiving Day, November 25, 1954.

EMPLOYES' STATEMENT OF FACTS: Prior to November 17, 1954, forces were increased at Little Rock, Arkansas in the car department and two carmen were recalled to their home station from Gurdon, Arkansas where they had been working under Rule 23 for some months:

> "TRANSFERRING MEN WHO HAVE BEEN LAID OFF RULE 23(a): While forces are reduced, if men are needed at any other point, such men as are laid off by reason of force reductions will be given preference to transfer with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern all cases."

and when they elected to return home vacancies for two carmen were created at Gurdon and being unable to get four year carmen to fill the vacancies two helpers were upgraded, namely, R. M. Crawley and R. B. Davidson, to fill these vacancies created by the two men leaving Gurdon to return to their home point at Little Rock, Arkansas.

Then, Carman Easter, a carman at Hope, Arkansas, a one-man point, went on vacation and H. E. Brown, car helper at Gurdon, Arkansas, was setup to fill the job at Hope, Arkansas, and on November 22, 1954 was assigned to this job for three (3) weeks. The carrier elected to fill these jobs when Car Helpers Crawley, Davidson and Brown vacated their helper positions because of being upgraded, and having no furloughed helpers at Gurdon, the carrier, before hiring new men to increase their forces at Gurdon, complied with Rule 23, above quoted.

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 reads "regularly assigned . . . employe" and does not refer to **position.** It matters not whether the position is a so-called permanent one, or one established as a temporary position—under the language of Article II, Section 1, the **employe** must be **regularly assigned** to a position.

This is not a case of first impression for your Board. In Docket No. 1886, involving a dispute between System Federation No. 97 and the Santa Fe Railway, it was contended that the claimants in that case were entitled to compensation for holidays falling on May 30 and July 4, 1954. The same article of the same agreement was urged in support of that claim as in the instant case. Your Board, with the assistance of Referee Douglass, in Award No. 2052, denied the claim and held as follows:

> "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 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 **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 burden of proof rests upon the employes in this case. See Second Division Award No. 1996 and Third Division Award Nos. 6402, 6650 and 6673, as well as numerous others in all Divisions of the N.R.A.B.

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 this dispute were given due notice of hearing thereon.

The carrier pleads the nine (9) month limitation of Article V of the August 21, 1954 Agreement in its original submission. The highest designated officer of the carrier wrote the employes' representative the final decision declining the claims on June 27, 1955. On June 6, 1956 the notification of intention to file submission was given the secretary of this Division. The requirements of the rule not having been met we are precluded from consideration of the claim which is barred.

AWARD

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.