

Award No. 2557
Docket No. 2379
2-GM&O-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. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

GULF, MOBILE AND OHIO RAILROAD COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the applicable agreements the Carrier improperly denied Carman Helper A. O. Newbill compensation for the Labor Day, September 5, 1955, holiday.
2. That, accordingly, the Carrier be ordered to compensate Carman Helper A. O. Newbill in the amount of eight (8) hours at the pro rata hourly rate for the Labor Day, September 5, 1955, holiday.

EMPLOYEES' STATEMENT OF FACTS: A. O. Newbill, hereinafter referred to as the claimant, is employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Jackson, Tennessee, as a carman helper. The claimant, having been furloughed, was recalled to service in a restoration of forces on May 5, 1955 and was assigned to a regularly assigned position on the 11:00 P.M. to 7:00 A.M. shift, Thursday through Monday, with Tuesday and Wednesday as rest days.

Under date of August 12, 1955, the carrier issued a reduction in force notice, the reduction to be effective on August 16, 1955. Claimant's name is shown on the notice, but at the close of business on August 16, 1955, claimant was instructed by the carrier to sign a notice that he desired to perform relief work on regular assignments.

The claimant was further directed by the carrier to continue to work on the regularly assigned position, bid in by him, on the 11:00 P.M. to 7:00 A.M. shift, Thursday through Monday. The claimant lost no time as a result of the reduction in force notice and further, as shown, he worked his regular assigned position from the time of recall to service on May 5, 1955, until he was actually furloughed on September 13, 1955.

Carrier submits that the instant claim should be denied and prays your Honorable Board to so decide.

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 A. O. Newbill held a regular assigned position as carman helper on third shift on August 12, 1955, at which time the carrier issued a reduction of forces notice, naming Newbill as one of those to be furloughed August 16.

First shift Carman Helper Minton had been off on account of illness for more than thirty (30) days preceding August 16, on which date the employe then filling that sickness vacancy was furloughed. Whereupon, another third shift man took over Minton's job, which had the net result of permitting or requiring that claimant Newbill continue to do the same helper work on the third shift as he had been doing. The significant fact is that Newbill continued doing his same work without interruption. He was told that he was going to be furloughed, but as an actual fact he was not. The place of the regular employe who was off sick was on the first shift. Newbill on third shift was continuing his routine work on August 18 and was not working in place of Minton.

Because the Minton vacancy was not bulletined, this Board hesitates to conjecture whether the claimant would or would not have been actually furloughed on August 16. We are of the further opinion that we should not rationalize after the fact, by concluding that Newbill was filling a vacancy on either the first shift for Minton, or on the third shift for Minton's substitute.

The intent, meaning, and purpose of the agreement of August 21, 1954, as expressed and followed by the parties, and by the referees' interpretations in those awards covering the subject, will be best served by accepting Award No. 2173 as a guide in our decision of this claim. We find that claimant continued to be a regularly assigned employe and therefore eligible to be paid the compensation claimed for Labor Day, September 5, 1955.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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