Award No. 2563
Docket No. 2355
2-SAL-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied Machinists C. H. Bailey and C. D. Mullens compensation for the July 4, 1955 Holiday.

2. That, accordingly, the Carrier be ordered to compensate the afore-named Machinists in the amount of eight (8) hours at the pro rata hourly rate for the July 4, 1955 Holiday.

EMPLOYES' STATEMENT OF FACTS: C. H. Bailey and C. D. Mullens, hereinafter referred to as the claimants, are employed by the Seaboard Air Line Railroad Company, hereinafter referred to as the carrier, as machinists at Hialeah, Florida.

Claimant Bailey was assigned by the carrier to fill the position of Machinist E. K. Ashton on the 8:00 A.M. to 4:00 P.M. shift, Saturday through Monday, with Thursday and Friday as rest days.

Claimant Mullens was assigned by the carrier to fill the position of Machinist H. D. Hilliard on the 12:00 Midnight to 8:00 A.M. shift, Monday through Friday, with Saturday and Sunday as rest days.

The claimants worked their regular assigned work days immediately preceding and following the Fourth of July holiday.

The Fourth of July, 1955, holiday fell on a work day of the regular assigned work week of the claimants.

used, both in the Board's recommendation and in the agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof. We find the claim should be denied."

Since the rule clearly specifies that an employe must be "regularly assigned" in order to receive the holiday allowance and two referees (including a member of the Emergency Board that recommended such rule) have ruled that an employe temporarily filling a position does not qualify for the holiday allowance, there can be no question about the organization's position being erroneous.

By no stretch of the imagination can the claimants be classified as being regularly assigned—they were simply temporarily working the positions while the employes regularly assigned thereto were on vacation.

Therefore, there is no merit to the claim and it should 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 waived right of appearance at hearing thereon.

Claimants were furloughed employes temporarily filling positions of employes absent on vacation. Consequently they were not "regularly assigned" employes and Section 1 of Article II of the Agreement of August 21, 1954 is not applicable to them.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2563

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 vacations of the usual incumbents of those positions.

This award, if it were accepted as defining "regularly assigned employee" as used in the Agreement of August 21, 1954, would rob the agreement of much of its substance. The term "regularly assigned employee" 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 employee" 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 specfic rule of the agreement so specifies, that rule is observed—as it should be under general principles of contract law. This award subverts it.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink