Award No. 2696
Docket No. 2543
2-C&O-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region and Hocking Division)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreements the Carrier improperly denied compensation to:

Carmen P. E. Hale, C. W. Timmons, Edward White, E. L. Ray, Daniel Gullett and Billy Ellis.

Carmen Helpers C. E. Curry, Elmer Midkiff, Millard McNeely and Lowell Medley

for the July 4, 1955 Holiday.

2. That accordingly, the Carrier be ordered to compensate the above mentioned Carmen and Carmen Helpers of the amount of 8 hours at the pro rata hourly rate for the July 4, 1955 Holiday.

EMPLOYES' STATEMENT OF FACTS: Carmen P. E. Hale, C. W. Timmons, Edward White, E. L. Ray, Daniel Gullett, Billy Ellis and Carmen Helpers C. E. Curry, Elmer Midkiff, Millard McNeely and Lowell Medley, hereinafter referred to as the claimants, are employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, at Peach Creek, West Virginia.

On June 15, 1955, the carrier posted Bulletin No. 255 and 256, copies submitted herewith and identified as Exhibits A and B, respectively, effective June 27, 1955, at 7:00 A.M. As a result of the bulletin, forces were rearranged, vacations granted and the necessary assignments were filed, at the direction of the carrier.

the performance of such work did not change their employment status and claimants were not regularly assigned employes during the period immediately prior to the holiday, July 4, 1955.

In handling on the property, the employes have not contended claimants were regularly assigned employes, but have agreed that they were not regularly assigned, and have progressed their claim on the basis that the employes were "qualified otherwise." See carrier's Exhibit A.

While none of the claimants in this case were regularly assigned and their claim is without merit, it will also be noted that Claimants Ellis and Midkiff were filling temporary vacancies which had Monday (the day of the week on which the holiday fell) as a rest day, and even if the position of the employes was correct insofar as the other claimants are concerned, which carrier does not concede, under no circumstances would Ellis and Midkiff have qualified for holiday pay, as the holiday did not fall on a work day of the position which they were working.

The fact that employes must be regularly assigned before they can qualify for holiday pay under Section 1, Article II of the August 21, 1954 Agreement, is well established. See Awards 2052, 2169, 2254, 2281, 2297 and 2345 of the Second Division National Railroad Adjustment Board.

Carrier has a similar claim with the carmen pending before your Board at this time, which is covered by Docket 2378, and also has a similar claim pending before your Board with the sheet metal workers, who are members of the same system federation, covered by Docket 2332.

Carrier has shown that claimants were not regularly assigned employes and that Article II of the August 21, 1954 Agreement was applicable only to regularly assigned employes. Carrier submits that the claim is not supported by the rules and should be declined.

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.

The claimants were furloughed employes temporarily filling positions of senior furloughed employes who were called back to perform some assignments, but who were absent on vacation. Consequently these claimants were not "regularly assigned" employees and Section I of Article 2 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 2nd day of December, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2696

While it is true that a bulletin was posted June 15, 1955 showing that the claimants were to be furloughed on June 27, 1955, the evidence of record discloses that they were not furloughed but were retained in service and "regularly assigned" in conformity with the current agreement. They qualified for Holiday pay in accordance with the provisions of Article II, Section 3, of the Agreement of August 21, 1954 and therefore Section 1 of Article 2 is applicable to them.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink