Award No. 2966
Docket No. 2188
2-CNO&TP-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL (Machinists)

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreements the Carrier improperly denied Machinist C. L. Murphy holiday pay for Labor Day, September 6, 1954.

2. That accordingly the Carrier be ordered to properly apply the agreements and compensate Machinist C. L. Murphy for the Labor Day, September 6, 1954, holiday for eight (8) hours at the pro-rata rate.

EMPLOYES' STATEMENT OF FACTS: C. L. Murphy, hereinafter referred to as the claimant, entered the service of the Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, as a machinist at Somerset, Kentucky, on November 30, 1926.

The claimant was furloughed at Somerset, Kentucky on April 6, 1951, and on the same date he was transferred by the carrier to Danville, Kentucky. The claimant was on furlough at Danville, Kentucky at the time he was recalled to service to fill a vacancy in a regular assigned machinist position created by the absence of Machinist T. E. Connally, who was off duty due to illness. The bulletined hours of the assignment were from 11:00 P.M. to 7:00 A.M., work week Friday through Tuesday, and rest days of Wednesday and Thursday. Labor Day, September 6, 1954, fell on Monday, an assigned work day of the work week of the claimant, who was required by the carrier to render service on this day for which he was compensated at the time and one-half rate. The claimant worked his regular assigned shift on the work days immediately preceding and following the holiday.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has

time. Both are a part of the same agreement. Surely no group of men engaged in negotiating a contract would refer in one section of that contract to furloughed employes as "regularly assigned employees," and in another section as "furloughed employees." They did **not** do so in writing the agreement of August 21, 1954, yet that is exactly what the brotherhood here contends they did.

If brotherhood representatives did what is here alleged and agreed to identify the same employes as "regularly assigned employees" in one section of the agreement and as "furloughed employees" in another section, carrier and the Board would be interested in the brotherhood making some logical explanation as to why its negotiators agreed to so identify the employes.

Employes become "regularly assigned" only (1) by being hired to fill a position, (2) by bidding on and being assigned to a position under bulletin rules, (3) by displacing (rolling) onto a position, or (4) by being re-employed on their former positions under Rule 26 after furlough.

Employes become furloughed (1) by being cut off in a force reduction, or (2) by being displaced (rolled) and not standing for a regular assignment.

There was no permanent vacancy in the position occupied by Machinist Connelly. To the contrary, it was of a temporary nature. Machinist Murphy, being a furloughed or unassigned employe, was utilized in filling it. He was **not** hired to fill the vacancy. He did **not** bid on it, nor was he assigned under bulletin rules. He did **not** displace (roll) onto the job, nor was he re-employed on his former position under Rule 26. By no stretch of the imagination, or strained interpretation of the agreement, can it be logically contended that Machinist Murphy was a "regularly assigned" hourly rated employe at any time when filling the temporary vacancy in the position to which Machinist Connelly was regularly assigned. He was **not** a "regularly assigned" employe on Monday, September 6, 1954. It follows that Machinist Murphy did **not** qualify for the holiday pay under Sections 1 and 3 of Article II of the agreement of August 21, 1954, and is **not** entitled to pay for the time here claimed. In this situation, the Board cannot do other than make a denial award because the agreement has been properly applied, and carrier has paid all that it has contracted to pay.

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.

From the record, the Claimant, Machinist C. L. Murphy, was furloughed from his regular assignment as Machinist at Danville, Kentucky, on April 16, 1954. Machinist T. E. Connelly at Danville, Kentucky, became ill in August 1954, and Claimant Murphy, while on said furlough, was recalled to fill the position of Connelly during Connelly's illness. The said Claimant temporarily filled Connelly's position from August 16, 1954 until October 22, 1954, when Machinist Connelly returned to his work.

The Holiday of Labor Day fell on September 6, 1954 while Claimant was filling Connelly's position. The Claimant worked 8 hours during said Holiday and received time and a half for his said work. The said Claimant, while he was temporarily working from August 16, 1954 until October 22, 1954 as a Machinist, due to the absence of the regularly assigned Machinist, Connelly, who was ill, was not a regularly assigned hourly rated employe. The said Claimant on Labor Day, September 6, 1954, was a furloughed employe temporarily filling the position of an employe, absent due to illness.

The Claimant had worked the regularly assigned shift on the workdays immediately preceding and following the Holiday but in view of the fact that he was not a regularly assigned employe on September 6, 1954 within the meaning of Section 1 of Article II of the said Agreement dated August 21, 1954, the claim herein must 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 13th day of October, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2966

Claimant met the requirements of Section 3 of Article II of the National Agreement of August 21, 1954 by working the workdays of the position he occupies immediately preceding and following Labor Day. Article II, Section 1 of the August 21st Agreement provides in substance that when a holiday falls on a workday of the workweek of the employe, such employe shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which the employe is assigned. Employes who possess employment rights under the schedule agreement are entitled to the eight (8) hours' holiday pay whether they are working their regular assignment or whether they are working on temporary assignments whose workweek contains a holiday. Having qualified for holiday pay under the National Agreement of August 21, 1954, the claimant should receive the pay specified in that Agreement for holidays.

/s/ R. W. Blade
/s/ C. E. Goodlin
/s/ T. E. Losey
/s/ Edward W. Wiesner
/s/ James B. Zink