

Award No. 2968

Docket No. 2239

2-SOU-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-CIO (Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreements the Carrier improperly denied Machinist L. L. Lively holiday pay for Christmas Day 1954 and New Year's Day 1955.

2. That, accordingly, the Carrier be ordered to properly apply the agreements and compensate Machinist L. L. Lively for the aforesaid holidays for eight (8) hours at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: L. L. Lively, herinafter referred to as the claimant, is employed by the Southern Railway Company, herein-after referred to as the carrier, as a machinist, at the Birmingham, Alabama shops with a seniority date of March 12, 1948.

On December 17, 1954, a notice of reduction in force was posted, in accordance with the rules of the controlling agreement, at the Birmingham shops. Claimant's name was shown on the notice and had the reduction in force gone into effect, it would have caused the claimant to be furloughed, however, on account of a number of other machinists taking vacations and otherwise requesting to be off, the proposed reduction, affecting the claimant, did not become effective and claimant continued to work.

Claimant was regularly assigned to the 11:00 P.M. to 7:00 A.M. shift, Thursday through Monday, with rest days Tuesday and Wednesday, prior to the posting of the notice on December 17, 1954, and he continued to work the same hours and work week together with having the same rest days subsequent to the posting of the notice.

Claimant was not required to render service on either of the holidays and the carrier denied him holiday pay for both holidays.

their regular amount of take home pay and still have the benefit of holidays. Employees who hold no regular assignments do not have a regular or usual amount of take home pay. Their work is dependent upon the occurrence of temporary vacancies, or work of a temporary nature.

In the instant case the claimants had been removed from their regular assignments as the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employees. Following the claimants' separation from their regularly assigned positions, their take home pay from thence forward became irregular—dependent upon work of a temporary nature when such existed.

The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein it is stated that " * * each regularly assigned hourly and daily rated employee shall receive eight hours' pay * * ". (Emphasis ours.) Thus, the agreement limits payment to regularly assigned employees and does not provide for payment to an employee who is temporarily filling a position."

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Machinist Lively worked on the third shift, 11:00 P.M. to 7:00 A.M., as Machinist Inspector on the outside ramp at Birmingham, Alabama Shop, Thursday through Monday, with rest days, Tuesday and Wednesday.

At the close of business on December 22, 1954, Claimant was listed as being laid off due to a reduction of force. Many Machinists were on vacation at the time.

After December 22, 1954, Claimant however continued working as a Machinist Inspector on the outside ramp on the third shift from 11:00 P.M. to 7:00 A.M. through January 3, 1955.

Even though Claimant was listed as being laid off at the close of business on December 22, 1954, he in fact was not so laid off as he continued in his regular work.

Claimant did not work the Christmas and New Year's Holiday but did work on the work day immediately preceding and following the said Holidays. Claimant, under all the facts, was a "regularly assigned employee" within the meaning of Article II, Section 1 of the August 21, 1954 Agreement, and his claim should be sustained.

AWARD

Claim sustained.

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.