Award No. 3017
Docket No. 2733
2-MP-MA-'58

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. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier did not properly compensate Machinists G. C. Torkelson, M. Silsby, W. W. Westrick and Machinist Helper J. Rodgers for Labor Day, September 3, 1956.

2. That accordingly, the Carrier be ordered to additionally compensate Machinists G. C. Torkelson, M. Silsby, W. W. Westrick and Machinist Helper J. Rodgers in the amount of eight (8) hours pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Machinists G. C. Torkelson, M. Silsby, W. W. Westrick and Machinist Helper J. Rodgers, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as machinists and machinist helper at the Kansas City Shops, Kansas City, Missouri.

The claimants started their vacations in line with the vacation schedule worked out at Kansas City, Missouri by the local management and the local representatives of the claimants during the early part of 1956. Their vacation included Labor Day, September 3, 1956, which fell on a work day of their work week and had the claimants not been on vacation they would have worked on Labor Day, September 3. The claimants' names were posted on bulletin No. 76 dated August 27, 1956, showing the names of the employes to work on Labor Day, September 3. After their names it showed "vacation" indicating that they were on vacation, and other employes were called in in their place to fill their jobs. Claimants were paid eight (8) hours at the straight time rate but were denied time and one-half rate as provided for in the agreement.

We think it is obvious, from the purposes expressed by the Emergency Board, that there could not be more than the usual take-home pay of an employe included in the daily compensation paid by the carrier for his assignment. That amount has been paid claimants in this case. This conclusion is inescapable in the light of the agreed upon interpretation of Article 7(a) of the Vacation Agreement excluding casual and unassigned overtime as pointed out above.

In conclusion, the carrier states that the issues in dispute in this docket have been resolved in Awards 2212, 2302 and 2339 by your Division. The carrier does not understand why this claim has been progressed since the contentions made here have clearly been denied. The carrier has shown that the claim is not supported by the rules and lacks merits but the task of your Board is made easy in this dispute in the light of the overwhelming precedent requiring a denial of this claim.

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.

This claim for 8 hours pay at time and one-half rate for machinists, who were on their vacations on Labor Day 1956 and who were paid straight time therefore, is based on the organization's claimed violation of Article 7(a) of the vacation agreement which reads as follows:

> "(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Both parties have cited the note to Rule 5 which reads:

> "Note: Notice will be posted five (5) days preceding a holiday listing the names of employes to work on the holiday. Men will be assigned from the men on each shift who have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of men to be assigned but in event of failure to furnish sufficient employes to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

The essential question to be determined here is whether or not claimants had a regular assignment which would have worked on the holiday in question. The carrier shows an agreed interpretation of the vacation agreement dated June 10, 1942, which reads in substance:

> "* * * an employe having a regular assignment will not be any better or worse off, while on vacation, * * *, than if he had remained at work on such assignment, **this not to include casual or unassigned overtime** * * *."

It is an undisputed fact that "at Kansas City the machinists are worked on these jobs by rotating the holiday work * * * in accordance with Rule 5".

We conclude that inasmuch as the available work is rotated on holidays, it cannot be said that any particular employe has a regular assignment to work on any given holiday. The observance and compliance with Note to Rule 5 creates irregularity which takes the claimants out of the "regular assignment" status contemplated by Rule 7.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November, 1958.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3017 AND 3018

The majority ignores the fact that the claimants, had they not been on vacation, would have worked the instant Holidays for the reason that said Holidays occurred within their regular weekly assignments and under the Note to Rule 5 "Men will be assigned from the men on each shift who would have the day on which the holidays falls as a day of their assignment if the holiday had not occurred. . . ."

The agreed to Interpretation of Article 7(a) of the National Vacation Agreement provides in part as follows:

> "This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation as to the daily compensation than if he remained at work on such assignment, * * *."

Therefore the claimants should have received the amount of compensation for the Holiday they would have received had they been working their regular assignment.

/s/ James B. Zink
/s/ R. W. Blake
/s/ Charles E. Goodlin
/s/ T. E. Losey
/s/ Edward W. Wiesner