Award No. 3554
Docket No. 2957
2-MP-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C.I.O.
(Carmen)

MISSOURI PACIFIC RAILROAD COMPANY—GULF DISTRICT

DISPUTE: CLAIM OF EMPLOYES:

1. The Carrier violated the current Agreement when it refused to allow the four (4) senior Carmen and one (1) senior Carman Helper, who were regularly assigned to work on the repair track at Palestine, Texas, to work Thanksgiving Day, November 29, 1956.

2. That the Carrier be ordered to additionally compensate Carmen Tom Holleman, Lacy Oldham, W. E. Ross, A. T. Tucker and Carman Helper James Wren, in the amount of twelve (12) hours at the pro rata rate of pay account of their not being allowed to work said holiday.

EMPLOYES' STATEMENT OF FACTS: On the repair track at Palestine, Texas, on the date involved in this claim, the carrier had four (4) carman jobs and one (1) carman helper job assigned to work seven days per week.

Carmen Holleman, Ross, Oldham and Tucker, and Carman Helper James Wren hereinafter referred to as the claimants were the senior carmen and carman helper assigned to work on the repair track at Palestine, Texas with an assigned work week of Monday through Friday. Four (4) other junior carmen and one (1) junior carman helper were assigned to the repair track with a work week of Wednesday through Sunday, and were considered relief men.

In the example set forth hereinabove showing seven-day-per-week positions with rest day relief employes there would have been, under the ruling in Award 2282, but one employe on a given position that carrier would have worked on the Thursday holiday here involved. Certainly Rule 11 and the Note therein was not intended to require the carrier to work every position employed in the seven-day operation on all holidays.

In this case there were eight or nine employes assigned in the seven-day operation on the repair track; service requirements on this holiday justified working four of them, which we did. Why, then, should the carrier be required to work all of them? We think it should not be required to do so, necessitating the payment of two and one-half days' pay to four or five employes whose services were not needed.

We further believe that the employes recognize this and do not feel that all of the employes assigned on the repair track should have been worked. This is based upon that part of the employes' letter to carrier dated June 21, 1957, supra, reading:

> "* * * certainly the **senior** four (4) carmen and the senior carman helper who had this as one of their assigned work days should have been allowed to work." (Emphasis added.)

As previously stated, it was on the basis of that contention and argument presented during the discussion of this case on July 25, 1957, that the carrier was agreeable to disposing of the case by allowing this senior group of employes payment at the pro rata rate—the proper payment in circumstances where no service is performed. In that offer carrier did not recognize that all employes assigned to work on the repair track should have been used on the holiday in question.

In conclusion it is the position of carrier that under the circumstances here existing its offer to dispose of the case by the payment to claimants at the pro rata rate, recognizing that the senior employes should have been used, was proper and in accordance with previous rulings by your Board, as shown hereinabove. Carrier reiterates its contention that neither Rule 11, nor Award 2282, has any applicability in the situation here involved. The contention and claim of the employes should, therefore, be denied.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said disputes were given due notice of hearing thereon.

Claimants were assigned to the repair track at Palestine, Texas Mondays through Fridays, and other carmen were similarly assigned Wednesdays through Sundays. On Thanksgiving Day, November 29, 1956, a holiday, claimants were not used, but some of the carmen on the Wednesday through Sunday assignment junior to the claimants worked that day.

Claimants seek pay at time and one-half rate for the holiday not worked and claim support in Rule 3 (b) of the applicable agreement and our Award No. 2282.

Rule 3(b) provides that employes "required to perform work" on certain specified holidays, of which Thanksgiving Day is one, shall be paid at time and one-half rate. The employes maintain they were assigned to seven day positions; that Thanksgiving Day was one of their assigned days on which they should have been "required to perform work", and that Award 2282 is controlling.

Award 2282 is predicated on a finding that claimants were assigned on seven day positions and the note to Rule 11 of the agreement was interpreted to mean that employes so assigned must be worked on holidays falling on a day of their assigned work week. Except for its stated interpretation of the note mentioned, Award 2282 specifically recognizes that employes not worked on the holiday are correctly paid at the straight time rate.

In the instant case we find that claimants were not assigned seven days per week positions but were working five days per week positions on a seven day staggered work week basis. No rest day relief employes were assigned. Hence Award No. 2282 lends no support to these claims. We think the reasoning in our Award No. 1606 is pertinent here. Claimants are to be paid at straight time rate for eight hours on the holiday in question.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3554

The majority's finding that "claimants were not assigned seven days per week positions but were working five day per week positions on a seven day staggered work week basis" is refuted by Employes' Exhibit "A", a letter addressed to the Vice-General Chairman—Carmen by a railroad official, in which it is stated "Each of the five claimants here involved was employed in a 7-day operation on the repair track, together with several other employes, and the holiday in question, which was Thursday, fell on the assigned work day for these claimants."

Since Award No. 1606, cited by the majority, is not pertinent we see no cause to discuss it other than to say that it involves a different railroad and a different agreement. The majority correctly states that "Award 2282 is predicated on a finding that claimants were assigned on seven day positions and the note to Rule 11 of the agreement was interpreted to mean that employes so assigned must be worked on Holidays falling on a day of their assigned work week." This being so it is obvious that Award 2282, involving

the instant railroad agreement, should have been followed and the instant claim sustained.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink