

**Award No. 3806
Docket No. 3477
2-C&EI-CM-'61**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they:

(a) Improperly denied Carman E. M. Rogers, pay in the amount of eight hours at the straight time rate of pay for Thanksgiving Day, November 28th, 1957.

2. That accordingly the Carrier be ordered to additionally compensate Carman E. M. Rogers in the amount of eight hours' pay at the straight time rate for Thanksgiving Day, November 28th, 1957.

EMPLOYEES' STATEMENT OF FACTS: Carman E. M. Rogers, hereinafter referred to as the claimant, is employed at Terre Haute, Indiana, by the Chicago and Eastern Illinois Railroad Company, hereinafter referred to as the carrier, and is regularly assigned to a position of carman, working Monday through Friday.

Foreman E. L. Harper was granted permission to be off work on November 28, 29 and 30, 1957, which necessitated the carrier having a qualified employe act as foreman for those three days.

The claimant was asked to act in the capacity of foreman for the three days that Mr. Harper was off work. The claimant consented to act as foreman with the understanding that he would be compensated for holiday pay (Thanksgiving Day) due him under the provisions of the August 21, 1954 agreement.

When claimant was not paid holiday pay, claim was first presented at the local level and denied by Foreman Harper on January 8, 1958. Subsequent

scope of the carmen's agreement governing holiday pay. The manner in which he got there — whether by the exercise of seniority under the foreman's agreement, or by involuntary or voluntary acceptance of the assignment is not really pertinent to a disposition of the instant case, however, for the record it is a fact that he did not get on the foreman assignment through any exercise of seniority, but by a voluntary acceptance of the vacancy. The important fact is that on the holiday, and on the workday immediately following he was performing service under the agreement between the carrier and the A. R. S. A. and did not, therefore, qualify for holiday pay under the agreement between the carrier and the carmen's organization. While service under the two agreements cannot be combined for the qualifying purposes under the holiday agreement, it is of interest to note that claimant did receive pay, thus fulfilling the objective that the weekly pay shall not be reduced in a workweek in which a holiday falls, and also that the foreman's rate comprehends additional compensation for the holiday.

It is no more logical that the individual should be permitted to combine service under two agreements for the purpose of securing holiday pay, than that he should be permitted to invoke the time and one-half provision of the carmen's agreement to secure premium pay for time worked on the holiday on a position covered by the supervisors' agreement.

The facts and circumstances at issue in this case require a denial award.

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.

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

Two questions are involved: First, whether this Division has jurisdiction to determine a Carman's right to holiday pay when temporarily filling a foreman's place; and Second, whether the Carman is then entitled to such pay under the Agreement and the facts.

Rule 12 of the applicable Agreement provides:

"An employee assigned temporarily to fill the place of a foreman, will be paid the foreman's rate during the time so engaged, and will work the same hours and **under the same regulations as the foreman whose place he is filling.**" (Emphasis added)

"Regulations" must mean the rules regulating the foreman's working conditions. Thus the applicable Agreement in effect incorporated by reference the supervisors' rules in general as well as their wage rate, and this Division must have jurisdiction to consider them if it is to consider Claimant's rights under his own Agreement, including Rule 12 and the related Agreement of August 21, 1954.

The record shows that the American Railway Supervisors Association is not a party to the August 21, 1954 Agreement, and that supervisors do not

receive holiday pay, but are paid for time worked at a rate proportionate to the monthly wage regardless of holidays worked or not worked.

Since Rule 12 of this Agreement provides that a carman assigned temporarily to fill a foreman's place will work at the same pay rate and under the same regulations as the foreman, he is not entitled to holiday pay under the regulations applicable to carmen, including the August 21, 1954 Agreement.

It is therefore unnecessary to consider whether his having worked as a carman on the day preceding the holiday could have constituted part of the required qualification under Section 3 of Article II of that Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3806

System Federation No. 20, representing the claimant, is a party to the August 21, 1954 agreement and therefore this agreement must be applied to the facts in the present case. Under Sec. 1 of Article II of the August 21, 1954 Agreement a regularly assigned employe is entitled to holiday pay of 8 hours when a holiday falls on a work day of any assignment he may be working. Claimant was regularly assigned as a carman; he is entitled to 8 hours holiday pay whether he is working his regular assignment or whether he is working a temporary assignment whose workweek contains a holiday.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink