

**Award No. 3976
Docket No. 3784
2-CMStP&P-MA-'62**

**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. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1—That under the current agreement the Carrier did not properly compensate Machinist Helper John Hartner for the holiday falling on December 25, 1958.

2—That the Carrier be ordered to properly apply the agreement and compensate Machinist Helper John Hartner for the December 25, 1958 holiday for eight (8) hours at the pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS: John Hartner, hereinafter referred to as the claimant, was employed by the C. M. St. P & P. Railroad at Tacoma, Washington, as helper on December 16, 1958, worked a Tuesday through Saturday shift, rest days Sunday and Monday. Was laid off as of December 31, 1958 per Rule 27 Reduction in Force, paragraph (a) per the current agreement.

On December 1, 1958, there were twelve (12) helpers employed as helpers and on December 16, 1958 the claimant was restored to service, increasing the force to thirteen (13) helpers.

The claimant worked the day preceding and following the holiday, and December 25, 1958 was one of his regularly assigned work days.

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 declined to adjust it as evidenced by Mr. Amour's letter dated October 1, 1959 directed to General Chairman Earl A. Bensch.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The employees contend that the claimant is entitled to receive holiday pay for Christmas Day in accordance with the pro-

were furloughed in accordance with agreement rules and had no assignment. Section 3 of Article II of the agreement of August 21, 1954, designates which regularly assigned hourly and daily rated employees are qualified for holiday pay. It is a limitation upon Section 1 of Article II, but the requirements of Section 3 of Article II must be met in any event."

Also your attention is directed to Third Division Award No. 8498 reading in part:

"The term 'regularly-assigned' has a special significance beyond merely being assigned in a regular manner to temporarily fill in for an absent employee. (Award 8386) It has the same significance as owning the job. It is a permanent assignment bid in through seniority.

The claimant in the instant case is attempting to secure, through an award of this Division, a new agreement provision over and above that which was agreed to by the parties. It is a well-established principle that it is not the function of the Board to modify or change an existing rule.

The carrier asserts that it has conclusively established that the claim is without basis under the provisions of Section 1, Article II, of the agreement dated August 21, 1954 and it is respectfully requested that the claim be denied.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The claim is for Christmas holiday pay for Claimant Hartner, who had been furloughed but was recalled to service and worked a total of nine days between December 16 and 31, 1958, including December 24 and 26.

The Carrier contends that Claimant was not regularly assigned so as to be entitled to holiday pay under Article II, Section 1, of the August 21, 1954 Agreement; that he was merely "called to perform temporary service due to the shortage of help caused by the large number of vacations and absenteeism during this period in December."

However, the Employees submit as an exhibit the payroll sheet of the Machinist Helpers at the Tacoma Shops for December, 1958. It shows that eleven machinist helpers worked the entire month except for five separate one-day absences, only one of which was during the period while Claimant worked; and that Claimant did not merely fill temporarily the position of another regularly assigned employee, but constituted a twelfth machinist helper during the latter half of the month. Consequently we find that Claimant was a regularly assigned employee within the intent of Article II, Section 1, of the August 21, 1954 Agreement, and was therefore eligible to receive the benefit thereof.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.