Award No. 5392
Docket No. 5213
2-NYNH&H-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the current agreement, Rule 3, as amended August 21, 1954, August 19, 1960 and November 21, 1964, the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the carrier, improperly compensated R. Camp, upgraded to car inspector, hereinafter referred to as the claimant, for service performed on Saturday, May 30, 1964.

2. That accordingly the carrier be ordered to additional compensate the claimant in the amount of eight (8) hours at pro rata rate.

EMPLOYES' STATEMENT OF FACTS: The Claimant, R. Camp, was regularly employed by The New York, New Haven and Hartford Railroad Company, hereinafter referred to as the Carrier, as an ungraded Carman prior to May 22, 1964.

On May 22, 1964, Carrier posted Bulletin Notice No. 46, advertising vacancy for a car inspector at Shore Line Yard 3:00 P. M. to 11:00 P. M., Thursday through Monday, rest days Tuesday and Wednesday. Claimant being junior qualified man was assigned to fill the vacancy pending award being made. Claimant filled the position advertised in Bulletin Notice No. 46 through Saturday, May 30, 1964. For the holiday, Memorial Day, May 30, Claimant was paid eight (8) hours' holiday pay and eight (8) hours at time and one-half for service performed on the holiday.

By Bulletin Notice No. 47, dated May 29, 1964, the position of Car Inspector at Shore Line Yard was abolished effective at the close of business May 30, 1964.

Also effective at the close of work on May 30, 1964, there was a general furlough of employes in the Car Department and the Claimant was furloughed at the close of work on May 30, 1964.

We respectfully request the Board to find that claimant did not meet the qualifying conditions for entitlement to holiday pay for Saturday, May 30, 1964, and to render a denial decision.

All of the facts contained herein have been affirmatively presented to the Employes.

Oral hearing is not requested.

(Exhibits not reproduced).

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 waived right of appearance at hearing thereon.

Prior to May 22, 1964, Claimant was regularly employed by Carrier as an upgraded Carman. On May 22, 1954, Carrier posted a Bulletin advertising vacancy for a Car Inspector. This Claimant, being a junior qualified man, was temporarily assigned to fill the vacancy pending award of this Bulletined position. Claimant filled the position through Saturday, May 30, 1964. He was paid for the holiday, Memorial Day, May 30th, at the 8 hours holiday pay, and 8 hours at time and one-half for service performed on the holiday. By a subsequent Bulletin dated May 29, 1964, the position of Car Inspector was abolished as of the close of business May 30th, 1964. Also effective at the close of work on May 30, 1964, there was a general furlough of employes in the Car Department and Claimant was furloughed at the close of work on May 30, 1964. By another Bulletin dated May 29, 1964, Claimant was assigned to cover vacation relief of a Car Cleaner commencing June 2, 1964. As a result of a payroll audit, Carrier made a deduction of 8 hours straight time pay from Claimant's paycheck, and gave as its reason therefor that Claimant had not been qualified for holiday pay for May 30, 1964. Claimant contends that Carrier should be ordered to additionally compensate this Claimant in the amount of the deduction of 8 hours at the pro rata rate.

The decision in this dispute turns on a determination of whether or not Claimant was a "regularly assigned employe" on May 30th, 1964, as provided for in Section 3 of the Agreement. The numerous awards presented by the Claimant in support of his contention that he was a "regularly assigned employe" on May 30, 1964, are not in point in this particular instance. They have to do with "availability," "time limits," "furloughed employes" and like extraneous topics.

It is the opinion of this Board that in order to be a "regularly assigned employe," the employe must own the position. There is no contention in the record in this instance, that the Claimant owned the position to which he was assigned on May 30, 1964. Neither is there contention that he was relieving a regularly assigned employe on that date. Contrarily, the facts disclose that

Claimant was on a temporary assignment of a position he did not own and was not "regularly assigned" to this position. It is the further opinion of this Board that Claimant herein was covered by paragraph 2 of Section 1 and paragraphs 3 and 4 of Section 3 of Article III of the August 19, 1960 Agreement, which covers "other than regularly assigned employes," which sets out the qualifying conditions for holiday pay.

Therefore, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.

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