

Award No. 8054
Docket No. TE-7765

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad—Portland Terminal, that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to properly compensate D. D. Smith, for services rendered on November 25, 1954.

2. Carrier shall be required to compensate D. D. Smith for 8 hours, at the pro rata hourly rate of pay applicable to Cherryfield, Maine, in addition to that previously paid for services on said date.

3. Carrier violated the agreement when it failed and refused to properly compensate Frank O. Gardiner, for services rendered on February 22, 1955.

4. Carrier shall be required to compensate Frank O. Gardiner for 8 hours, at the pro rata hourly rate of pay applicable to second shift Rigby Yard, in addition to that previously paid for services on said date.

5. Carrier violated the agreement when it failed and refused to properly compensate R. M. Boothby, for services rendered on February 22, 1955.

6. Carrier shall be required to compensate R. M. Boothby for 8 hours, at the pro rata hourly rate of pay applicable to second shift Portland Union Station, in addition to that previously paid for services on said date.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Maine Central Railroad Company and Portland Terminal Company, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective January 1,

payment for service performed on stipulated holidays which holidays are identical with those named in Article II, Section 1 of the August 21, 1954 Agreement.

The first rule then, and the only one in existence today on these properties, covering payment to Telegraphers for certain holidays, is Article II, Section 1 of the August 21, 1954 Agreement. This rule specifically restricts such payment to employees who are **regularly assigned**.

Notice of intention to file the instant claim, ex parte, with your Honorable Board was sent the Secretary, Third Division, in letter dated July 21, 1955, by President Leighty of The Order of Railroad Telegraphers, the same individual who negotiated and executed the August 21, 1954 Agreement as "Chairman, Employees' National Conference Committee, Fifteen Cooperating Railway Labor Organizations".

The Carriers' Conference Committees who negotiated the August 21, 1954 Agreement for the various Railroads represented by such Committees, which included the Maine Central Railroad and Portland Terminal Companies, have assured these Carriers that Section 1 of Article II of the August 21, 1954 Agreement has no application to extra employees.

The Findings in the instant case before your Board, then, have great significance for **ALL RAILROADS, PARTIES TO THE AUGUST 21, 1954 AGREEMENT**.

For these reasons, then, we earnestly request your Honorable Board find that these Carriers **DID NOT VIOLATE** the Agreement between the Parties.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case involves claims on behalf of three named Claimants for holiday pay for certain enumerated holidays. These Claimants were all "spare" employees, each of whom, under varying circumstances, filled temporary vacancies on regularly assigned positions, during the respective periods during which the named holidays occurred.

The essential issue here is whether these claimants were, during the respective periods involved, "regularly assigned" employees within the meaning of that term as used in Article II, Section 1 of the National Agreement of August 21, 1954. Therefore, the issue in this case is, for all essential purposes, the same issue as that decided in Award 8053.

It may be noted that the wording of Article 35 (e) in the instant case, while somewhat different from that of Article X, Section 2-b in Award 8053, has essentially the same meaning. Article 35 (e) here involved reads:

"Spare employees will receive the compensation of the positions to which assigned."

Thus, compensation is related here to positions rather than to persons, whereas holiday pay is related to qualified employees rather than positions.

The record reveals that the Claimant employees were spare (extra) employees during the respective periods involved, and hence were not regularly assigned employees for the purposes of the holiday rule. Therefore, they were not entitled to holiday pay on claim dates.

This conclusion is in accord with Third Division Awards 7430, 7431, 7432, 7978, 7979, 7980 and 7982, as well as Second Division Awards 2052, 2169, and 2297.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1957.