Award No. 8371
Docket No. TE-8118

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad (Southern Region), that:

(1) The Carrier violates the Agreement between the parties to this dispute when it failed and refused to pay employes named below eight hours pro rata holiday pay; and

(2) The Carrier shall now pay the employes named eight hours pro rata on the date named which was a holiday.

(a) J. K. Phillips, eight hours at the pro rata rate for February 22, 1955, a holiday.

(b) A. E. Plunk, eight hours at the pro rata rate for February 22, 1955, a holiday.

(c) B. M. Bagwell, eight hours at the pro rata rate for February 22, 1955, a holiday.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are on file with this Division of the National Railroad Adjustment Board and by reference thereto are made a part of this submission.

Disputes covering each of the three claimants named were instituted and handled on the property in strict accordance with defined procedure and are now appealed to this Board and Division under that procedure.

All claimants were regularly assigned to the extra board on February 22, 1955, the claimed date.

Each claimant received compensation on the day preceding and following the Holiday.

All positions were hourly rated.

employe. Not only does such employe have to be an **assigned employe** but, as the agreement provides, he must, in addition, be a **regularly** assigned employe. An extra employe does not have a regular assignment—he works only when work is available. There can be no doubt that the entire basis for the holiday payment was so that regularly assigned employes could maintain their "usual take-home pay". This is the only group of employes that have "usual take-home pay".

Obviously, had the parties intended that holiday payment would be made to extra employes, they would have so stipulated. Had the parties intended that Article II, Section 1 refer to both regularly assigned and extra employes the agreement would contain such an intention.

The only result from the Petitioner's position in this case would be to stirke the words "regularly assigned" from Article II, Section 1, or to incorporate in the article the words "extra employe", which are not there now.

This Board has many times held that its duty is to construe the agreement, as written, and that the Board is without authority to rewrite the agrement. See Awards 6959, 6912, 6833, 6828, 6757, 6365 and others.

The Claim is not supported by agreement or practice and should be denied.

OPINION OF BOARD: Decision on this case must turn on the fact that none of the claimants here was, on February 22, 1955, a holiday, "regularly assigned", within the meaning of Article II, Section 1 of the August 21, 1954 National Agreement as already interpreted by a long line of decisions of this Division. Awards 7978, 7979, 7980, 7982, 8053, 8054, 8055, 8056 and 8058.

A denial award will, therefore, be made.

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 Employes involved in this dispute are respectively Carrier and Employes 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 13th day of June, 1958.