Award No. 8498
Docket No. TE-8322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central of Georgia Railway, that:

CASE No. 1

1. Carrier violated the terms of the Agreement between the parties when it failed and refused to properly compensate J. R. Gaulding for November 25, December 25, 1954 and January 1, 1955 (holidays).

2. Carrier shall be required to compensate J. R. Gaulding for eight (8) hours at the pro rata hourly rate of pay applicable to the second shift Operator-Leverman, Macon Junction, for November 25, 1954; to the third shift Operator-Leverman, Macon, Junction, for December 25, 1954; and to the first shift Operator-Leverman, Griffin Tower, for January 1, 1955 (holidays).

CASE No. 2

1. Carrier violated the terms of the Agreement between the parties when it failed and refused to properly compensate W. C. Jackson for December 25, 1954 (a holiday).

2. Carrier shall be required to compensate W. C. Jackson for eight (8) hours at the pro rata hourly rate of pay applicable to the third shift Operator-Leverman position, Griffin Tower, for December 25, 1954 (a holiday).

CASE No. 3

1. Carrier violated the terms of the Agreement between the parties when it failed and refused to properly compensate W. A. Radney for November 25 and December 25, 1954 (holidays).

2. Carrier shall be required to compensate W. A. Radney for eight (8) hours at the pro rata hourly rate of pay applicable to the second shift Operator-Leverman, Terra Cotta, Georgia, for November 25 and December 25, 1954 (holidays).

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are by reference thereto made a part of this submission.

The claims, as set forth herein, arose out of Carrier's failure or refusal to properly compensate operators J. R. Gaulding, W. C. Jackson and W. A. Radney, for eight (8) hours at the applicable rate of the respective positions occupied for designated holidays, in accordance with the provisions of Article II, Sections 1 and 3 of the August 21, 1954 Agreement.

CASE No. 1: J. R. Gaulding is the claimant in Case No. 1 and worked as follows:

Macon Junction:	Assigned hours 3:00 P.M. to 11:00 P.M.
Work Week:	Wednesday through Sunday.
REST DAYS:	Monday and Tuesday.

Operator Gaulding was, on Thanksgiving Day, November 25, 1954, the date of violation, the holder of a temporary assignment on the second shift position at Macon Junction. He had been assigned to this position by proper authority and in accordance with the seniority rules of the Agreement. He commenced work on this assignment on November 20, 1954. He worked November 21, took the two rest days of the position, November 22 and 23, and then worked November 24, 25, 26, 27 and 28, then again took two rest days, November 29 and 30. He worked December 1 and 2, which completed the Macon Junction assignment. Thursday, November 25th, Thanksgiving Day—the holiday—fell on the second day of his work week. He worked Friday, November 26; Saturday, November 27; and Sunday, November 28. Thus, compensation paid by the Carrier was credited to the workdays immediately preceding and following the holiday, Thanksgiving Day. Thanksgiving is one of the holidays, among the seven designated under Article II, Section 1 and 3 of the August 21, 1954 Agreement. Thus, Claimant Gaulding as the regularly assigned hourly rated employe on the second shift at Macon Junction, having complied with the provisions of the August 21, 1954 Agreement, as it pertains to pro rata pay for holidays, is entitled to receive eight (8) hours' pay at the pro rata rate of the position occupied.

Macon Junction:	Assigned hours 11:00 P.M. to 7:00 A.M.
Work Week:	Friday through Tuesday.
Rest Days:	Wednesday and Thursday.

Gaulding was also, on December 25, 1954, the date of violation, the holder of a temporary assignment on the third shift at Macon Junction indicated above. He had been assigned to this position by the proper authority and in accordance with the seniority rules of the Agreement. He commenced work on this assignment on December 17, 1954. He worked the assignment December 17, 18, 19, 20 and 21, then took the two rest days of the position, December 22 and 23. He then worked December 24, 25, 26 and 27 on the position. Saturday, December 25, Christmas Day, one of the seven designated holidays, fell on the second work day of claimant's work week. He worked Sunday, December 26 and Monday, December 27. Thus, compensation paid by the Carrier was

employes formerly held the position prior to the time the claim arose is not supporting evidence. We are of the opinion Carrier acted clearly within its prerogative when it abolished the positions, and it is clearly shown that when the positions were abolished the work was discontinued. Rule 20(a) provides for the abolishment of positions, and the method to use to bring about the abolishment.

"It is therefore the Opinion of the Board that no conclusive evidence has been produced to show any violation of the Agreement as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper. Where it is shown, as here, the positions were properly abolished and the work was discontinued, this Board by conjecture cannot say the work was taken over by other parties without some supporting proof. The claim should be denied in its entirety."

And there are numerous other awards clearly enunciating the foregoing time after time.

Carrier's Exhibits, which give the record, do not show that the Employes have ever established any basis for their claim, therefore, the claim should be denied for lack of proof. The Carrier urges the Board to so hold.

CONCLUSION

The effective agreement clearly does not provide for what the Employes are demanding. It is purely and "all to gain, and nothing to lose" proposition with them. Any enlargement of the rule should not be permitted. The intent and language of the pertinent rule is crystal clear.

The facts show that these were **extra operators** and were not regularly assigned by any stretch of the imagination. Only **regularly assigned employes** are entitled to holiday pay if they otherwise qualify.

Furthermore, the record is totally lacking of any specific rule violation—they just say there was a violation. There is no question that the burden of proof is upon the petitioners, and they have none in the record. They cannot now come before this Board with new data to attempt to sustain their position.

For the reasons outlined herein, it is crystal clear that the agreement does not sustain the Employes and that these claims should be denied in their entirety. Carrier urges the Board to so hold.

All data submitted in support of Carrier's position in this claim has been presented orally or by correspondence to the Employes or duly authorized representative thereof, and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involves an interpretation of the provisions of Section 1 Article II of the Contract of August 21, 1954 which provides as follows:

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enu-

merated holidays when such holiday falls on a workday of the workweek of the individual employe:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above enumerated holidays."

Section 3 of Article II stipulates:

"An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employe's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

"Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

The Claimants herein were extra employes temporarily filling vacancies over holidays for other employes who were relieved from duty for various reasons. The Claimants had worked as follows:

J. R. Gaulding:

Macon Junction	3:00 P.M. to 11:00 P.M.	1954
Worked:	Nov. 24, **Nov. 25**, Nov. 26.	
Macon Junction	11:00 P.M. to 7:00 P.M.	1954
Worked:	Dec. 21, Dec. 24, **Dec. 25**, Dec. 26	
Rest Days:	Dec. 22, Dec. 23	
Griffin Tower, Griffin Ga.	7:00 A.M. to 1:00 P.M.	1955
Worked:	Dec. 30, Dec. 31, **Jan. 1**, Jan 4,	
Rest Days:	Jan. 2, Jan. 3	

W. C. Jackson:

Griffin Tower, Griffin Ga.	10:00 P.M. to 6:00 A.M.	1954
Worked:	Dec. 24, **Dec. 25**, Dec. 28, Dec. 29	
Rest Days:	Dec. 26, Dec. 27	

W. A. Radney:

Terra Cotta	3:00 P.M. to 11:00 P.M.	1954
Worked:	Nov. 23, Nov. 24, **Nov. 25**, Nov. 26 Dec. 24, **Dec. 25**, Dec. 28	
Rest Days:	Dec. 26, Dec. 27	

The above Claimants each worked the holidays in question, for which they were paid time and one-half for holiday pay. They each worked the day before and the day following the holiday, or in lieu thereof, took that day as a regular leave day and worked the following scheduled work day.

There is but one issue left to be decided. Are the Claimants entitled to receive 8 hours pay for the positions occupied on the respective holidays in addition to the time and one-half pay earned and received?

Much has been made of the term **"Regularly assigned Employe"** as used in the contract, and as differentiated from **"Extra Employe."** This appears to be a play on words. There were Regular Employes and Extra Employes. The regular employes worked regularly, the extra employes worked occasionally. When the regular employes were assigned to a job, they were regularly assigned, when the extra employes were assigned to a job they were specially assigned. Specially assigned to a regular job to take a regular man's place until he returned.

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

A study of the awards indicates that the problem is not new. It arises under two type of contracts, one of which contains the provisions of a rule which read "Extra employes will receive the same compensation as the person they relieve." In the contracts which contain this provision the Awards tend to vary (Award 7977); in those that do not contain this provision the claims have been in the main denied. (Awards 8388, 8387, 8372, 8386, et al.) The claim here, being governed by a contract not containing the special wording, and similar in all respects to the previous awards cited, is denied.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1958.