

Award No. 8901
Docket No. CL-8736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective agreement between the parties governing hours of service, rates of pay and working conditions when it refused and continues to refuse to pay the occupant of a regularly established position the holiday pay to which she was entitled on September 6, 1954.

(2) Ruth Wait now be paid the pro rata daily rate of the position occupied, \$14.31, for Labor Day, September 6, 1954.

JOINT STATEMENT OF FACTS: On August 29, 1954 Mrs. Ruth Wait was an extra or unassigned employee holding seniority on the Springfield (Missouri) Terminal seniority district.

As the senior available qualified extra list employee Mrs. Wait was called in accordance with Rule 21 (c) to fill a short vacancy on Steno-Clerk Position No. 23 at the Springfield Freight Office. This position is assigned Monday through Friday, exclusive of holidays. She occupied this position during the period August 30 through September 13, 1954, including Friday, September 3rd, and Tuesday, September 7th, which were the workdays immediately preceding and following the Labor Day Holiday, September 6th. She did not work the holiday.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties governing hours of service, rates of pay and working conditions of employees effective January 1, 1949, supplementary agreements of July 15, 1949, July 25, 1950, August 8, 1950 and December 15, 1950 (Forty Hour Week Rules) and supplemental agreement of August 21, 1954, copies of which are on file with Your Honorable Board and by this reference thereto are made a part hereof. The particular rules in this dispute are:

There has been no dispute between the parties as to the meaning of the words "regularly assigned employees" as used in Article II, Section 1 (i) of the March 19, 1949 Conference Committee Agreement, nor has there been any dispute as to the work days of a work week of a regularly assigned employee under that rule.

When one considers together Article II, Section 1 (h) and 1 (i) of the March 19, 1949 Conference Committee Agreement and Article II, Section 1 of the August 21, 1954 Conference Committee Agreement, the similarity of the wording in Article II, Section 1 (i) of the former agreement and Article II, Section 1 of the latter agreement is such that the employees specified in the holiday pay rule are the regularly assigned employees whose "work week" begins on the first day on which the assignment is bulletined to work.

The Forty Hour Work Week Agreement clearly distinguishes extra, unassigned or furloughed employees from regularly assigned employees and the same distinction is apparent in Article II, Section 1, of the August 21, 1954 Agreement where the rule limits holiday pay to regularly assigned hourly and daily rated employees. There is no difference in the meaning of the words between two agreements.

The organization in its May 22, 1953 proposal sought a rule which would have given all employees seven holidays off with pay in each year, and having been unsuccessful in securing such a rule through the collective bargaining processes of the Railway Labor Act, they are here seeking to achieve that aim by Board Award in the guise of an interpretation of an agreement rule.

All data in support of Carrier's position have been presented to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

OPINION OF BOARD: The Carrier and the Organization in their Joint Submission agree that on August 29, 1954 Mrs. Ruth Wait was an extra or unassigned employee holding seniority on the Springfield (Missouri) Terminal seniority district. As senior available qualified extra list employee she was called in accordance with Rule 21 (c) to fill a short vacancy on Steno-Clerk Position No. 23 at the Springfield Freight Office. This position is assigned Monday through Friday, exclusive of holidays. She occupied this position during the period August 30 through September 13, 1954, including Friday, September 3rd, and Tuesday, September 7th, which were the work days immediately preceding and following the Labor Day Holiday, September 6th. She did not work the holiday.

The dispute arises over the failure of the Carrier to pay the Claimant the pro rata daily rate for the position, for Labor Day.

The Organization contends that Claimant should be paid and cites particularly Rules 13, 21 (c) and Article II—Holidays of the Agreement of August 21, 1954.

"Rule 13. New positions or vacancies of thirty calendar days or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the thirty day limit they shall be immediately bulletined."

“Rule 21. * * *

“(c) When forces are increased or vacancies occur, employees on the extra list shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees, when available, shall be given preference on seniority basis to all extra or temporary work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin which are not filled by re-arrangement of regular forces. Extra list employees failing to return to service within seven days after being notified (by mail or telegram sent to the last address given) or give satisfactory reason for not doing so will be considered out of service.”

“ARTICLE II—HOLIDAYS

Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

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. An employee 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 employee'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 Carrier takes the position that the claim rests primarily upon Article II, Section 1 of the August 21, 1954 Conference Committee Agreement.

Mrs. Wait occupied this position only during the period August 30 through September 13, so under Rule 13 it was considered a short vacancy and was filled without bulletining. She was filling said position because a regularly assigned employee was absent and could be relieved at any time by the regular employee returning to his assignment. In other words Mrs. Wait was only protecting extra work and could not be considered regularly assigned.

We do not agree with the Claimant and are unable to find where any of the rules cited have been violated by the Carrier.

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 28th day of July, 1959.