Award No. 8906

Docket No. CL-8737

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 and continues to violate the terms of the currently effective Agreement between the parties when it failed and refused to pay the occupant of a regularly established position to which she has been regularly assigned by bulletin, for holiday pay on May 31, Decoration Day, and July 5, Fourth of July, 1954.

(2) Nadine Stine now be paid the pro rata rate of the position occupied, $14.67, for each date May 31 and July 5, 1954.

JOINT STATEMENT OF FACTS: On March 25, 1954 Bulletin No. 9 was issued by the Superintendent of the Eastern Division advertising a temporary vacancy on the Steno-Clerk position in his office, assignment Monday through Friday, exclusive of holidays. On April 7, 1954 the Superintendent issued Supplement No. 1 to Bulletin No. 9 advising all concerned that Miss Nadine Stine was the successful applicant for the temporary vacancy. See Exhibits 1 (a) and 1 (b).

At the time that she bid on this vacancy, Miss Stine was an extra or unassigned employe holding seniority on the Eastern Division seniority district.

Miss Stine continued to occupy this position until August 19, 1954. During this period she worked the workdays immediately preceding and following the Memorial Day and Independence Day Holidays, May 31 and July 5, respectively. She did not work the holidays.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties governing hours of service, rates of pay and working conditions of employes effective January 1, 1946, supplemental agreements of

Continuing on to the next paragraph of the March 19, 1949 Conference Committee Agreement—Article II, Section 1 (i), (Rule 36½ (i) of the July 15, 1949 agreement), the term "work week" for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days starting with Monday.

There has been no dispute between the parties as to the meaning of the words "regularly assigned employes" 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 employe 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 employes specified in the holiday pay rule are the regularly assigned employes 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 employes from regularly assigned employes 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 employes. 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 employes 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 employes or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The joint statement of facts in this case show no disagreement on the propriety of the assignment of Miss Stine to fill the temporary vacancy during the time that the regularly assigned employe was occupying a higher rated position. In fact on March 25, 1954 Bulletin No. 9 was issued by the Superintendent of the Eastern Division advertising a temporary vacancy on the Steno-Clerk position in his office, assignment Monday through Friday, exclusive of holidays.

On April 7, 1954 the Superintendent issued Supplement No. 1 to Bulletin No. 9 advising all concerned that Miss Nadine Stine was the successful applicant for the temporary vacancy. Miss Stine was an extra or unassigned employe and being the senior applicant was given the position.

This assignment by the Carrier required Miss Stine to fill the position, accepting all of the conditions of the assignment and performing all the duties attached to the position. She worked the assignment from April 7, 1954 to about August 19, 1954 when she was displaced by a senior qualified employe.

During her assignment to this position she worked the workdays preceding and following the Memorial Day and Independence Day holidays, May 31 and July 5, respectively, but she did not work the holidays.

We are now requested to decide: was Miss Nadine Stine entitled to be paid the pro rata daily rate of the position occupied for the two holidays that fell during her assignment.

The Carrier contends that Miss Stine did not become the "regularly assigned employe" as a result of the assignment notice, and that her assignment and that her entitlement was secondary subordinate to the one possessed by Mrs. Mayfield and her occupancy of the position could have been terminated at any time by the return of the regularly assigned employe, Mrs. Mayfield.

The vacancy was for an indefinite duration and that is the reason for its being bulletined. Both Mrs. Mayfield and Miss Stine were required to fulfill all of the conditions of their assignments and no other employe was entitled to work the positions during the period of their assignments. Although it is true that when Mrs. Mayfield completed her assignment she would be entitled to return to her steno-clerk position and Miss Stine would again become an extra or unassigned employe, nevertheless while they are assigned to a regularly established position, they become the regularly assigned employe on that position for the period of time that they occupy their new assignments.

Under Rule 21 (c), Miss Stine was returned from the extra list, to fill the vacancy in the Steno-Clerk position, therefore she was no longer on the extra list and she gives up her rights to extra work or other vacancies during the time of her assignment to Mrs. Mayfield's position and for all intents she becomes the regularly assigned Steno-Clerk. Mrs. Mayfield becomes the regularly assigned employe of the higher rated position and until she completes her assignment in that position she has no rights in the Steno-Clerk position because she has vacated same.

We must give consideration to all of the rules in the agreement before we decide what constitutes a regular assigned employe and a regular position. Under rule 21 (a) the Carrier has the right to abolish "regular positions" by giving notices as required. So technically speaking it might be stated that any Group 1 or Group 2 position may be abolished, if the Carrier should find it necessary, and this Board has upheld this right as a prerogative of the Carrier.

In this situation there was a "position" that was necessary for the proper operation of the Carrier's business and he asked that it be filled by his bulletin. Carrier's contention is true that Mrs. Mayfield could have terminated claimant's entitlement to the steno-clerk position but she did not choose to do so and Nadine Stine worked the assignment from April 7, 1954 to about August 19, 1954, when she was displaced by a senior qualified employe.

We agree with Carrier's contention that there can be only one regularly assigned employe. We also contend that under Section 1, Article II, 40-Hour Week, that "The expressions 'positions' and 'work' used in this Article II refer to **service, duties** or **operations necessary** to be performed the specific number of days per week and not to the work week of individual employes." So when an employe takes a higher rated position thereby causing a vacancy in her position she becomes the regularly assigned employe in her new assign-

ment and the person filling her vacancy becomes the regularly assigned employe in her new assignment and the person filling her vacancy becomes the regularly assigned employe as this article clearly intended.

Carrier cites Award 7432. In this case claimant Griffin was filling a vacation assignment up to the day prior to Washington's Birthday, then worked a different assignment on the day following Washington's Birthday.

The other claimant in Award 7432 worked a short vacancy for nine days because of illness of regular employe. Further, this award deals with a situation where according to agreement with the General Chairman the number of positions on each extra list is designated and these positions are then bulletined and assigned in the same manner as regular positions even though they may be for a few days. Our recent award, No. 8901, was a similar case where the claimant was only protecting extra work.

Carrier also refers to Award 8324 and argues that inasmuch as we sustained the Organization's position in this award, we must deny their claim here as it would reverse what we sustained in Award 8324. A careful review of the Board's opinion in Award 8324 reveals that in that case the Board stated: "* * * The applicable regulation is 2-B-2, which reads:

> '* * * the seniority of an employe * * * shall date from the first day on which he was regularly assigned to a Group 1 position * * *.'"

We find no seniority question contained in this situation and to go further we find that in Award 8324 the Carrier maintained that "regularly assigned means assigned by bulletining the vacancy, whether the vacancy be temporary or permanent." Carrier's present contention is a complete contradiction to his contention in Award 8324. We do not find any applicability of Award 8324 in our present case.

In consideration of the facts in this case we find that Carrier had a "position" to be filled and did appoint Nadine Stine to this vacancy which she occupied for several months, performing all of the work, service and duties required on this position, and did relinquish all of her rights as an extra or unassigned employe when she accepted the steno-clerk position thereby becoming the regularly assigned occupant of this steno-clerk position. Therefore, we must find that she is entitled to the holiday benefits of the steno-clerk position.

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 Employe involved in this dispute are respectively carrier and employe 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 claimant be paid the pro rata daily rate of the position occupied, $14.67, for each holiday date May 31 and July 5, 1954.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1959.

DISSENT TO AWARD NO. 8906, DOCKET NO. CL-8737.

In Award 8906, the majority agrees "with Carrier's contention that there can be only one regularly assigned employe", and correctly recognizes—

> "The joint statement of facts in this case shows no disagreement on the propriety of the assignment of Miss Stine to fill the temporary vacancy during the time that **the regularly assigned employe** (Mrs. Mayfield) was occupying a higher rated position." Emphasis and parenthetic interpolation added.)

Accordingly, Miss Stine could only have been a substitute for "the regularly assigned employe", Mrs. Mayfield, and the claim should have been denied.

The primary difference between the facts involved in this case and those involved in the case covered by Award 8901, considered by the same Referee and at the same time as the instant case, insofar as the issue before this Division is concerned, is that, in Award 8901, the claimant was assigned by Carrier under Rule 21 (c) to fill the temporary vacancy therein without necessity for bulletining same, whereas that Rule was not argued or applicable in the instant case, but on the contrary the temporary vacancy here was required to be and was bulletined under Rules 10 and 13 because it was expected to last for more than thirty days, and Claimant herein was the successful applicant therefor. Petitioner admitted "that the Carrier complied with the provisions of Rules 10 and 13". However, assignment by bulletin to the temporary vacancy did not make Claimant "the regularly assigned employe"; she held the position as a substitute, not regularly (Award 8324).

For the foregoing reasons, among others, Award 8906 is in error and we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen