

Award No. 9481

Docket No. CL-9114

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

1. The Carrier violated Article II, HOLIDAYS, Section 1 and 3 of the August 21, 1954 Agreement between participating Eastern, Western and South-eastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, in refusing to allow the paid holiday of eight (8) hours at straight time rate, Washington's Birthday, February 22, 1955, to thirty-three (33) employes at Detroit, Michigan Freight House, covered by the rules of the Schedule for Freight Handlers. Names of employes for which claim is made for the paid holiday of eight (8) hours at straight time rate, and seniority standing on the Freight Handlers' roster, are appended hereto in the order of their seniority standing.

2. Each employe for which claim is made, shall be compensated for the paid holiday of eight (8) hours at straight time rate in addition to compensation which may have been received for work performed on February 22, 1955.

EMPLOYEES' STATEMENT OF FACTS: Thirty-three freight handlers employed at Detroit Freight Station, for which claim is made, are listed with their freight handler service dates, as shown on the Freight Handlers' roster. Each freight handler for whom claim is made for the paid holiday, February 22, 1955, worked eight (8) hours on Monday, February 21 and eight (8) hours on Wednesday, February 23, 1955; the day preceding and the day following the holiday. A number of these employes, as indicated below, worked eight (8) hours on February 22, and were paid time and one-half, but not allowed the paid holiday, as such.

Name	Seniority Date	February 22—Washington's Birthday
L. J. Herbert	9-14-1944	Worked 8 hours—denied paid holiday
H. Graves	4-15-1945	
A. Taylor	10- 8-1945	
A. Carter	1-17-1946	
E. Wilson	3-11-1946	

Article II, Section 3, of the August 21, 1954 Agreement, referred to in Employees' Statement of Claim (1), reads as follows:

"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 employees' 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."

This Section 3 is not relevant to the dispute presented for the reason that "the holiday pay provided in Section 1" of Article II is provided only for "each regularly assigned hourly and daily rated employee," not for unassigned employees. The provisions of Section 3 simply provide a qualifying condition which a regularly assigned hourly or daily rated employee must meet in order to be entitled to the holiday pay provided for regularly assigned hourly or daily rated employees, only, in Section 1 of Article II.

The contentions of the Committee should be dismissed, and the claims denied.

The substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the question in dispute.

OPINION OF BOARD: Holiday pay for Washington's Birthday, 1955, is claimed under Article I of the National Agreement of 1954, for a group of Freight, Handlers, herein called "Claimants", at the Carrier's freight house in Detroit, Michigan.

The issue is whether the Claimants were "regularly assigned" within the meaning of Article II, Section 1, of the Agreement.

At the freight house, in addition to regular or basic gangs with fixed assignments, there is a pool, of which Claimants are part, used to round out the regular gangs, to form additional gangs, to handle peaks and so forth. Vacancies in the regular gangs are bulletined and are awarded according to seniority. Claimants have not bid for such vacancies, because of preferences in shift or other reasons.

It is argued that Claimants are regularly assigned because they have, in fact, had steady work and freight handlers with less seniority received pay for the holiday. The steadiness of work, however, is happenstance, not deriving from the nature of Claimants' assignments; and the fact that juniors received holiday pay shows merely that they had regular assignments.

It is further argued that Claimants are regularly assigned because their assignments are not defined in the Agreement as something other than regular, i.e. as "extra" or the like; but this negative argument falls short of a showing of the affirmative prerequisite to holiday pay.

We conclude that the nature of Claimants' assignments was random, not regular and the claims will be denied (see e.g. Awards No. 7430 and 8762).

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 there was no violation.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1960.