

**Award No. 10136**  
**Docket No. MW-8741**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**J. Harvey Daly, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**THE DENVER AND RIO GRANDE WESTERN RAILROAD**  
**COMPANY**

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

(1) The Carrier violated the effective agreement when it refused to allow the Extra Gang Laborers assigned to Extra Gang 6030 and 6032 eight (8) hours' straight-time pay for May 30, 1955;

(2) The Carrier further violated the effective agreement when it refused to allow certain Extra Gang Laborers assigned to Extra Gang 6030 eight (8) hours' straight-time pay for July 4, 1955;

(3) The Claimant Extra Gang Laborers referred to in Parts (1) and (2) of this claim each be allowed the exact amount lost because of the violation referred to in Parts (1) and (2) of this claim.

**NOTE:** The Claimants and the amounts due each have been identified in letters dated July 5, 1955, and August 3, 1955, addressed to Mr. E. B. Herdman, Director of Personnel by General Chairman W. R. Ancell and confirmed in letters dated August 31, 1955, and September 19, 1955, addressed to General Chairman W. R. Ancell by Mr. Herdman.

**EMPLOYES' STATEMENT OF FACTS:** The Claimants were regularly assigned to the hourly-rated position of Extra Gang Laborer on either Extra Gang No. 6030 or No. 6032.

The Claimant Extra Gang Laborers referred to in Part (1) of our Statement of Claim received compensation credited by the Carrier to the work days immediately preceding and following Decoration Day, May 30, 1955.

Similarly, the Claimant Extra Gang Laborers referred to in Part (2) of our Statement of Claim received compensation credited by the Carrier to the work days immediately preceding and following July 4, 1955.

days not worked if they were regularly employed during the pay roll period in which the holiday occurred and were regularly employed during the pay roll period preceding the holiday. By reason of the fact Extra Gang 6030 was established May 3, 1955 and Extra Gang 6032 was established May 18, 1955, none of the employees on these gangs had established seniority and were regularly assigned, neither were they regularly employed during the pay roll periods May 1 to 15 and May 15 to 31, 1955. They were therefore not compensated for Decoration Day, May 30, 1955.

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With respect to claim of Extra Gang 6030, claim was submitted for one day's pay each, for 24 employees of this gang on July 4, 1955. Although the employees on Extra Gang 6030 had not established a seniority date by working the majority of the working days in each of three (3) consecutive months, the Carrier compensated 18 of the 24 men making claim, for one day's pay at pro rata rate July 4, 1955 by reason of the fact they were regularly employed during the pay roll periods June 16 to 30 and July 1 to 15, 1955. Six of the 24 laborers making claim for July 4, 1955 did not qualify.

The Carrier holds in view of the rules cited, the Employees involved were not on dates involved, regularly assigned employees under the provision of Section 1, ARTICLE II of the August 21, 1954 Agreement. The Carrier also holds it went beyond the provisions of ARTICLE II of the August 21, 1954 Agreement when it compensated 18 employees of Extra Gang 6030 to the extent of one day's pay each July 4, 1955 when the employees on that gang had not established seniority and were not as result thereof regularly assigned employees.

Copies of the Employees' letters of July 5 and August 3, 1955, as well as Carrier's letters of August 31 and September 19, 1955 are appended hereto.

All data in support of Carrier's position have been presented to the Employees and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not heretofore presented to it.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Carrier contends that for an employee to receive holiday compensation the following requirements — as set forth in Article II, Sections 1 and 3 of the current Agreement entitled "Holidays" — must be met:

1. The Employee must be a regularly assigned hourly and daily rated Employee;
2. The holiday must fall on a workday of the Employee's workweek;
3. The Employee must have compensation credited to the workday immediately preceding and the workday immediately following the holiday.

The record indicates that the Claimants not only complied with all the requirements set forth above but also complied with the provisions of Rules 11 and 12 as evidenced by the following:

1. Each Claimant has a regular extra gang laborer's position on either Extra Gang No. 6030 or No. 6032;

2. Each Claimant had a regularly assigned forty hour week with two designated rest days;

3. Each Claimant had a regularly designated assembly point;

4. Each Claimant had a regularly assigned starting time.

The Carrier's contention that the Claimants were not regularly assigned Employees and consequently they were not entitled to holiday compensation for May 30, 1955 and for July 4, 1955, is not supported by the record. Accordingly, the Board must find for the Organization and sustain the claim as presented.

**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

The Carrier violated the Agreement.

#### **AWARD**

The Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1961.