

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow holiday pay for February 22, 1956 to Section Laborers Robert Shaffer, Boe Newborn, Fred H. Kraft, Leonard Bowman, William Flax, Donald Friess and Kenneth Showalter.

(2) Each of the claimants named in Part (1) of this claim now be allowed eight hours' pay at the respective pro rata hourly rate of the position to which each claimant was assigned on the work days immediately preceding and following February 22, 1956.

EMPLOYES' STATEMENT OF FACTS: Claimants were regularly assigned hourly rated Section Laborers and had established seniority rights as such on the Carrier's C. K. Colorado Division.

Account of reduction in force, claimants were cut off their Section during the first period of January, 1956; recalled to work as Section Laborers on February 13, 1956, and were continued in service in such a class subsequent thereto, thereby receiving compensation paid by the Carrier and credited to February 21, 1956 and February 23, 1956, the workdays immediately preceding and following Washington's Birthday, February 22, 1956. Each of the claimants except Boe Newborn were still working as of September 29, 1956. Mr. Newborn had resigned some time prior to September 29, 1956.

In August of 1954, the parties consummated an Agreement providing for eight (8) hours' straight time pay for each of the seven (7) designated holidays, which includes Washington's Birthday.

The Carrier has refused to allow claimants eight (8) hours' straight time each as holiday pay for February 22, 1956.

The Agreement in effect between the two parties to this dispute dated August 1, 1950, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

It has been contended by the Brotherhood of Maintenance of Way Employees that since the men continued in service after the sidings were completed they should be considered regular employees and as such would be entitled to a day's pay at the pro rata rate for the holiday in question. We do not concur in this thought. As stated previously, the force was increased for a specific purpose of a temporary nature and the only intent and purpose in recalling these laborers was for this temporary work. It was because of other conditions developing as this temporary work was being completed that permitted the retention of these laborers in an active status.

In support of the Carrier's position in these claims your attention is invited to Third Division, National Railroad Adjustment Board Awards 7430, 7431, 7432 and Second Division, National Railroad Adjustment Board Awards 2169, 2170, 2171 and 2172. These awards deal with the subject of a pro rata day to employees who worked the day immediately preceding and the day following a recognized holiday, while such employees were employed on a temporary or unassigned basis and which claims were denied by your Honorable Board. We feel the instant claims fall within the same category as those listed above. We cannot agree that claimants were regularly assigned employees while employed in work of such a temporary nature.

There is no agreement requirement or merit to substantiate payment of these claims, and it is hoped this Division will so find.

(Exhibits not reproduced).

OPINION OF BOARD: This is another holiday pay case and the facts are substantially as follows:

The Employees in question were section laborers working for the Missouri Pacific in the vicinity of Healy and Shields, Kansas.

These facts are not disputed. Claimants had been laid off in a reduction of Employees early in January 1956. One of them started to work again on February 7 and others on February 13th.

It is further admitted that these men worked before and after Washington's Birthday.

This controversy turns upon the status of the Claimants on Washington's Birthday as to whether they were regularly assigned Employees or whether they were extra and unassigned.

It is the position of the Carrier that these men were extra Employees and as such did not come under the provisions of the holiday pay rule.

It is the position of the Organization that these men qualified under the provisions of Section 3, Article 2 of the August 21, 1954 National Agreement.

The record does not show anywhere that the Claimants denied that they had been duly informed their work was purely temporary.

The Organization further denies there is such a thing as an extra or temporary section laborer except those that come under Rule 31.

When we read the Agreement between said parties we must come to the conclusion that all this was carefully set forth in the provisions of the Agreement in Rule 2, Paragraphs (c) and (d-1).

We feel that Referee Elkouri set the pattern in Award 7978, see also 10118 (Carey) 10048 (Dugan).

We must find therefore, as we have held before, that these men were merely working as unassigned extra laborers and as such did not come under the holiday pay provisions as alleged by the Caimants.

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 of the Agreement and the claims are denied.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February, 1962.