

Award No. 10504

Docket No. MW-9721

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow certain of its Maintenance of Way employes eight hours' straight time pay for the December 26, 1955 and January 2, 1956 holidays.

(2) Each of the Claimants be allowed sixteen hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

Note: The Claimants have been identified in the attachments to a letter dated June 19, 1956 to Mr. J. F. Beaver, Assistant Chief Engineer by General Chairman T. W. Danner and confirmed in a letter dated June 29, 1956 addressed to General Chairman Danner by Mr. Beaver.

EMPLOYEES' STATEMENT OF FACTS: The Claimants referred to in the Statement of Claim were regularly assigned to various hourly rated positions in the Maintenance of Way and Structures Department. On or about December 23, 1955, the Claimants were notified that they were laid off, effective with the close of the work period on Friday, December 23, 1955. On or about January 2, 1956, each of the Claimants was notified to report for service on his respective position and gang at the beginning of the work period on Tuesday, January 3, 1956.

In complying with the Carrier's instructions, each of the Claimants received compensation credited by the Carrier to Friday, December 23, 1955, and to Tuesday, January 3, 1956.

In August of 1954 the parties consummated an agreement providing for eight hours' straight time pay for each of the seven designated holidays not worked (which includes Christmas and New Year's Day). The Carrier has

This conclusion is supported, in principle, by prior Board awards. For example, in Second Division Award No. 2299, Referee Carter, involving claim on behalf of an unassigned man for holiday pay under a paid holiday rule identical in principle and written in almost the same language as the one here to be interpreted, the Board denied the claim by holding that:

“* * *. While it is true that Claimant became the owner of a regular assignment on June 8, 1955, he was not the owner of a regular assignment on May 30, 1955, and consequently he was not a regular assigned employee on that day within the meaning of Section 1, Article II.

The following Awards sustain this conclusion: Awards 2052, 2169, 2170, 2171, 2172, Second Division; Awards 7430, 7431, 7432, Third Division.”

Also, see Second Division Award No. 2300, Referee Carter, denying a similar claim because claimant was **not**, on the involved holiday, a regularly assigned employee, or the owner, on such holiday, of a regularly assigned position.

Claim not being supported by the Agreement in evidence, the Board cannot do other than make a denial award.

All evidence here submitted is known to employee representatives.

Carriers not having seen the Brotherhood's submission reserve the right, after having done so, to make appropriate response thereto.

OPINION OF BOARD: This claim presents the same questions as those discussed in Award 10502, Docket MW-9719.

For the reasons assigned in our Opinion in that matter we hold that the claim here should be denied.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1962.