Award No. 11176
Docket No. MW-10475

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE TEXAS AND PACIFIC RAILWAY 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 eight hours' straight time pay to Welder Helper G. B. Wilkerson for the Fourth of July Holiday, 1957.

(2) Welder Helper G. B. Wilkerson, now be allowed eight hours' pay at straight time rate because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant G. B. Wilkerson is employed by the Carrier in the Welding Department, with seniority in such department as of December 20, 1952.

Prior to June 19, 1957, the date claimant was cut off, he was working at the Scottsville Welding Plant.

Mr. M. W. Smith, welder helper on Gang No. 2, was off due to personal illness during the first week of July 1957, thus creating a temporary vacancy, resulting in claimant Wilkerson being used to fill such vacancy. During Welder Helper Smith's illness, one (1) holiday (Fourth of July) occurred. Welder Helper Wilkerson worked each day of the period of illness of Welder Helper Smith, aside from July 4, 1957, and he was not allowed pay for this holiday.

Claim for one (1) day of holiday pay was filed in behalf of claimant Wilkerson and the Carrier has declined the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Sections 1 and 3 of Article II of the August 21, 1954 Agreement reads as follows:

"Second Division: 2052, 2169, 2170, 2171, 2172, 2254, 2281, 2297, 2299, 2300, 2301, 2311, 2332, 2345, 2463, 2476, 2477, 2486, 2492, 2493 and 2556.

"Third Division: 7430, 7431, 7432, 7721, 7978, 7979, 7980, 7982, 8053, 8054, 8055, 8056 and 8058.

"Case No. 16, Special Board of Adj. No. 136 (ORT vs. C&O), Awards 9 and 10, Special Board of Adj. No. 171 (BRC vs. GN).

"All these awards deny similar type claims and further support position here taken.

"The decision given you in Assistant Chief Engineer, Mr. Savage's, letter of August 7, 1957, is sustained, and the claim is respecfully declined.

Yours very truly,

(Signed) G. R. FRENCH
Director of Personnel

cc: Mr. W. J. Savage

Mr. J. L. Weatherby (013-3-83)."

This question has been fully presented and debated in the cases covered by the awards cited in that letter, and they are incorporated here by reference.

On the basis of the foregoing, the Carrier respectfully requests the Board to deny the claim.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employes or duly authorized representatives thereof and made a part of the particular question in dispute.

OPINION OF BOARD: The facts are not in dispute. Clamant was a furloughed employe prior to July 1, 1957. On July 1, 1957 he was assigned to replace an employe who was ill. He worked July 1, 2, 3 and 5, 1957, and he was paid for those four days. He and other employes did not work on the holiday, July 4, 1957 and Claimant was not paid for that day. He now claims eight hours pay for the holiday.

Sections 1 and 3 of Article II of the August 21, 1954 Agreement states:

"ARTICLE II — HOLIDAYS

"Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the

following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

"New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

"Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays.

* * * * *

"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 employee's 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.:

The question is whether Claimant was "regularly assigned" within the meaning of that Agreement.

This Board has dealt with this issue on many occasions. In Award 8913 (Murphy) a furloughed employe was assigned to replace an employe on vacation. A holiday occurred during that assignment. The Claimant worked the day before and the day after the holiday and was not paid for the holiday. We denied the claim for holiday pay under the same Agreement.

Similarly, we said in Award 10833 (Russell):

> "This Board has held in numerous prior Awards that furloughed Employees recalled to work in place of Employees on vacation are not regularly assigned within the perview of Article II, Section 1 of the 1954 Agreement, and, therefore, not entitled to holiday pay."

This principle is also enunciated in Awards 10048 (Dugan), 8053 (Guthrie) and 7721, without a Referee.

Whether a furloughed employe is recalled to replace an employe on vacation or to replace an employe who is sick does not change the meaning of "regularly assigned" in Section 1 of Article II of the 1954 Agreement. Claimant was not "regularly assigned" within the meaning of that Agreement as interpreted by this Board. We are obliged to follow the established rulings of this Board.

Award 10136 (Daly) cited by the Employes is not applicable because "the Claimants were the occupants of and each owned a regular extra gang laborer's position. They had a regularly assigned 40 hour workweek, two

designated rest days, a regularly designated assembling point, and a regularly assigned starting time . . ." We found that those Claimants were "regularly assigned hourly and daily rated" employes. Furthermore, there was a specific agreement governing extra employes. The facts in this dispute are not the same.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.