

Award No. 11551
Docket No. MW-10775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC 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 Section Laborer R. M. Tedrow eight hours' pro rata pay as Holiday pay for Labor Day, September 2, 1957;

(2) Section Laborer R. M. Tedrow now be allowed eight hours' pro rata pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: As of and prior to August 30, 1957, Mr. R. M. Tedrow was regularly employed, assigned and working as Section Foreman at Okaton, South Dakota.

The position of Section Foreman at Okaton, South Dakota was to be abolished effective with completion of tour of duty on Friday, August 30, 1957, and all interested employes, including the Claimant, were advised accordingly in advance of August 30, 1957.

Consequently, the Claimant promptly advised that, upon the abolishment of his position of Section Foreman, he would exercise seniority to a section laborer position at Murdo, South Dakota and he performed actual work on this position on the very first work day following the abolishment of his position as Section Foreman. He lost no time between the abolishment of his position of Section Foreman at Okaton, South Dakota and his first day of compensation service on the position of Section Laborer at Murdo, South Dakota.

Holiday pay in favor of Mr. Tedrow for Labor Day, September 2, 1957, was not allowed and was refused by the Carrier.

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

1 of the August 21, 1954 Agreement for eight (8) hours' pro rata pay for the holiday which occurred on July 5, 1954."

On the matter of whether an employe is regularly assigned to a position before or after he actually performs service on the assignment, your attention is also directed to NRAB First Division Award 12224, the findings reading in part as follows:

"In its statement of facts, the Committee asserts that 'the specific dispute here involved is on the point of whether he (the claimant) was a regularly assigned fireman with the expiration of the bulletin, 12 Noon, October 23, on which he was the senior applicant, as contended by Committee; or at 7 A.M., October 24, when he took first service on his new assignment, as contended by carrier.'

This Division has held in several awards that an employe is not regularly assigned to a position until he has begun the first tour of duty in his new assignment. (Awards Nos. 1373, 1736, 4901, 6352, 6430, 9878, 9972, and 11472)."

Lacking the support of schedule rules and agreements, the claim is devoid of merit and should be denied.

OPINION OF BOARD: The issue in this case is whether the Claimant is entitled to holiday pay for Labor Day, September 2, 1957.

The facts show that the Claimant was notified that his position as Section Foreman was to be abolished effective August 30, 1957. He immediately notified the Carrier that he would exercise his seniority rights as a section laborer. August 30th was a Friday. Saturday and Sunday were the Claimant's regular rest days and Monday was Labor Day. The Claimant reported to work on Tuesday as a section laborer. The Carrier has refused to pay him for the Labor Day Holiday.

This case is governed by the August 21, 1954 Agreement. The applicable sections provide:

"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	

* * * * *

"Section 2(a). Monthly rates, the hourly rates of which are predicated upon 169-1/3 hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by

12 in order to establish a new monthly rate. The hourly factor will thereafter be 174 and overtime rates will be computed accordingly.

“Weekly rates that do not include holiday compensation shall receive a corresponding adjustment.

“**Section 2(b).** All other monthly rates of pay shall be adjusted by adding the equivalent of 28 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The sum of presently existing hours per annum plus 28 divided by 12 will establish a new hourly factor and overtime rates will be computed accordingly.

“Weekly rates not included in Section 2(a) shall receive a corresponding adjustment.

“**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.”

It is the position of the Carrier that the Claimant was without any position from Friday until Tuesday. There is no question that the Claimant's position as a Section Foreman was abolished on Friday, August 30th but he then immediately became subject to call as a section laborer on August 31, September 1 and September 2. His status was therefore that of a section laborer during this entire period of time.

The purpose of the August 21, 1954 Agreement was to make it possible for the employes to maintain their normal take home pay in weeks during which a holiday occurs. See Award 7721. This was not done by the Carrier here.

A reading of the August 21, 1954 Agreement shows that before a regularly assigned employe is entitled to holiday pay he must have credited compensation for the workday preceding and succeeding the holiday. (See Section 3). This the Claimant had. While it is true that the workday preceding the holiday was worked as a monthly paid employe the Agreement does not provide that both of the days must be as an assigned hourly or daily rated employe and we would be adding language to the Agreement to so hold.

This case is distinguishable from other cases on this and other Divisions such as Second Division Award 2485 in that the payment to the Claimant here does not in any way amount to a dual payment for this holiday.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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