

**Award No. 11972**  
**Docket No. MW-11613**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Joseph S. Kane, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**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' straight time pay for the 1958 July Fourth Holiday.

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

**EMPLOYES' STATEMENT OF FACTS:** The Claimant was regularly assigned to the hourly rated position of Section Laborer at Murdo, South Dakota.

During the period from June 16, 1958 through July 4, 1958 the regularly assigned Section Foreman at Murdo was absent on his annual vacation.

The Claimant was assigned to and relieved the vacationing Foreman during the aforementioned period.

At the expiration of that temporary assignment, the Claimant returned to his regularly assigned position of section laborer and worked as such on Monday, July 7, 1958 and thereafter.

Holiday pay in favor of Mr. Tedrow for July 4, 1958 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.

first work day after the holiday, is necessarily compensation as a regularly assigned, hourly or daily rated employee. Monthly rated foremen and compensation for such service are factors that are not provided for in, and are foreign to, Sections 1 and 3, and if a monthly rated status and compensation therefor is involved in any manner, such as on the last work day before the holiday or the holiday itself, it cannot be considered as crediting the employee with service and compensation toward accrual of holiday pay as a regularly assigned hourly or daily rated employee under those Sections 1 and 3 of the Agreement. The employees are attempting to have included, through an award of your Board, a provision in the National Agreement of August 21, 1954, to permit monthly rated factors to apply to hourly or daily rated employees, and no such provision is now contained in Sections 1 and 3 of the mentioned Agreement, and your Board is not empowered to write such additional provision.

In recognition of all factors involved, particularly since the claimant was holding a vacation vacancy on a monthly rated foreman position on the date of the claim and would have worked on Friday (had service been required on the holiday) as that holiday fell on one of the normal work days of the foreman's position and was one of the work days of vacation accrued by and granted to the foreman, it is clearly evident that the claimant was not a regularly assigned hourly rated employee on the holiday or on the day before the holiday, nor did he receive compensation as a regularly assigned, hourly rated section laborer on the day before the holiday. It is, therefore, readily evident that the claim is without merit and the Carrier respectfully requests that it be denied.

All basic data contained herein has been made known to the Employees.

**OPINION OF BOARD:** The Claimant was assigned as an hourly rated section laborer at Murdo, South Dakota. From June 16, through July 4, 1958 he was assigned to relieve the vacationing foreman during the above period. On Monday, July 7, 1958 he returned to his regular assigned position as section laborer. The Claimant was monthly rated before and on the holiday and hourly rated Monday, July 7, 1958 after the holiday. The Carrier refused to pay him straight time pay for the holiday.

The question presented is: Did the Claimant as a monthly rated employee before, after and on the holiday meet the requirements of Article II, Sections 1 and 3 of the agreement and become entitled to straight time pay for the holiday?

The Carrier contends that to be compensated for holidays an employee must be a regularly assigned and hourly rated before and after the holiday. The Claimant on July 1, 2, and 3 received a monthly increment for the holiday of July 4th as a monthly rated employee provided by Section 2, of Article II of the agreement of August 21, 1954. Thus to receive in addition straight time pay for the holiday would be dual pay. The Claimant did not become an hourly rated employee until Monday, July 7, 1958. Furthermore, the Claimant was a monthly rated employee on the holiday and the workday prior to the holiday and did not comply with the requirements of Article II, Section 1, and 3, of the current agreement.

The Claimant contends that his regular assignment was that of an hourly rated employee and he was only a temporary foreman during the vacation period. In addition as a monthly rated employee he would receive an increment

of approximately one-half hour as holiday pay on the 4th of July for the 1, 2 and 3 of July which he worked. Thus there was no dual compensation.

The facts and circumstances herein reveal that although the complainant did work on the days preceding and on the holiday as a foreman and subsequent to the holiday as an hourly rated employe he complied with Article II, Section 1 and 3 of the agreement as decided in Awards 11551 and 11471. However, in this dispute the Claimant here has received some compensation for the holiday as a monthly rated employe and in Award 11551 the referee distinguished the facts there from Award 2485 and allowed the claim on this basis that holiday compensation had been received in Award 2485 and not in 11551.

I am in agreement with this reasoning and am of the opinion that where dual compensation is received the claim for holiday pay should be disallowed. However, from the facts in this dispute the dual pay received was insignificant as the complainant only received a prorated amount of his monthly rate for 3 days in July 1958, which the complainant contends amounted to one-half hour. This fact was not controverted by the Carrier.

In the language of Award 11551 it states:

"The purpose of the August 21, 1954 Agreement was to make it possible for the employees to maintain their normal take home pay in weeks during which a holiday occurs. . . ."

This was not accomplished when the Claimant was paid one-half hour for his holiday pay. In Award No. 10081 it is stated on page 7, that "Monthly rated employees receive their holiday pay over a period of 12 months. They receive holiday pay each and every month whether or not a holiday occurs in that month." This statement implies it was the purpose of the parties to apply the holiday pay to monthly rated employes on an annual basis, not for short term, vacation relief work. In addition the purpose of Article II, Section 1 implies that it was designed for the regularly assigned hourly rate employe rather than a vacation relief foreman, while Article II, Section 2 (a) applies to regularly monthly rated employes.

It is further difficult to understand why the parties would arrive at an agreement whereby an employe temporarily promoted, both for the benefit of the Carrier and the Claimant, could be penalized, by failing to receive a full weeks pay.

I am of the opinion that the Claimant complied with Article II, Section 3 of the current Agreement and further did not receive dual pay for the holiday of July 4, 1958.

Thus the Claimant should be allowed 8 hours pay for the July 4, holiday less any compensation earned as a monthly rated man on July 1, 2, and 3.

**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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary.

Dated at Chicago, Illinois, this 13th day of December 1963.

**CARRIER MEMBERS' DISSENT TO AWARD 11972  
DOCKET MW-11613**

Claimant was assigned, for three weeks including July 4, to a monthly rated section foreman's position, to which Article II, Section 1 was inapplicable.

The organization does not even argue that a monthly rated employe is entitled to holiday pay as a section laborer. As a matter of fact, its entire submission is devoted to showing that claimant ceased to be a section foreman July 3, thus tacitly admitting that if he was a section foreman on July 4, he was not entitled to holiday pay.

The Majority correctly found:

**"The Claimant was monthly rated before and on the holiday . . ."**

Such a finding dictates a denial of this claim as it is well established that a regularly assigned hourly-rated employe who temporarily works a monthly rated position takes the working conditions and all other pay benefits applicable to the monthly rated position to which assigned. **Awards 5811** (Carter), **6503** (Leiserson) and **7017** (Rader).

Award 11972 allows an employe, assigned as a section foreman, holiday pay as a section laborer without agreement or award support. For these reasons and others, we dissent.

/s/ W. M. Roberts

/s/ G. L. Naylor

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. De Rossett