

Award No. 12379
Docket No. MW-11300

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, 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 Albert K. Johnson eight hours' straight time pay for the July 4, 1958 holiday.

(2) Section Laborer Albert K. Johnson be allowed eight hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority as a section laborer on the Carrier's IM&D Division.

On June 10, 1958, the claimant, who was in furloughed status, was recalled to service to fill a newly established position of section laborer on Section No. 73 at Waldorf, Minnesota. He was not used to temporarily relieve some other employe.

The claimant received compensation from the Carrier which was credited to the workdays immediately preceding and following the 1958 Fourth of July holiday.

Nonetheless, the Carrier has refused to allow the claimant eight hours' straight time pay for the aforementioned holiday.

The claim has been handled on the property in the usual and customary manner.

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.

The Board will readily note that it held that a furloughed employe recalled to perform service of a temporary nature (similar to that involved in the instant case) had no regular assignment.

For the reasons outlined, it is the position of the Carrier that the claim is not supported by the aforementioned Article II, Holidays, of the Agreement of August 21, 1954, and Carrier respectfully requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant case the Claimant contends he is entitled to holiday pay for July 4, 1958 as a regular employe of the Carrier as a Section Laborer.

The record reveals that on June 10, 1958, the Claimant was a furloughed employe; that on that date he accepted service as a Section Laborer and the Carrier avers that such service was of a temporary nature. This averment the Organization has failed to overcome and we must find that the Claimant was a temporary employe.

In the circumstances, since the Claimant was not a regularly assigned employe, he did not qualify for holiday pay as claimed, and we must therefore deny the claim.

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 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 31st day of March 1964.