Award No. 14325

Docket No. MW-12051

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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 Mason and Concrete Mechanic Ernest Strubelt eight hours' straight time pay for the 1958 Thanksgiving Day holiday.

(2) Mason and Concrete Mechanic Ernest Strubelt now be allowed eight hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On August 29, 1958, the claimant, who was regularly assigned to the position of mason and concrete mechanic, was furloughed in force reduction.

During the periods from September 15 through September 26, 1958 and from November 10 through November 24, 1958, the claimant was recalled to service to fill temporary positions while the regular occupants were on vacation.

On November 25, 1959, the claimant was assigned to fill a newly created position of Mason and Concrete Mechanic and worked continuously in that capacity until the position was abolished effective as of December 12, 1958.

The claimant received compensation from the Carrier credited to the work days immediately preceding and following the 1958 Thanksgiving Day holiday.

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

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

The Agreement in effect between the two parties to this dispute dated May 1, 1952, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The claimant, Ernest Strubelt, holds seniority date of March 14, 1957 as Mason and Concrete Mechanic in Carrier's Bridge and Building Department. The wages and working conditions of this classification of employes are subject to schedule agreement between the Organization and Carrier, parties hereto, effective May 1, 1952, copies of which are on file with this board. The Carrier and Organization have also been parties

OPINION OF BOARD: Claimant was furloughed on August 29, 1958. On September 15 through 26 he filled in on vacation relief. From September 29 through October 3 he was on vacation. On November 10 through 23 he worked a vacation relief. On November 24 he was assigned to and commenced work on a position of Mason and Concrete Mechanic and worked on that position until it was abolished effective December 12. The Thanksgiving Day Holiday fell within the latter period. Carrier failed and refused to pay Claimant holiday pay for that day for the given reason that he was not a "regularly assigned . . . employe" within the meaning of those words as employed in Article II, Section 1 of the August 21, 1954 Agreement.

Concerning the position held by Claimant before and after the holiday, Carrier says in its Submission:

> "Carrier employs a basic Mason and Concrete force and in addition thereto, in accordance with Article IV of the August 21, 1954 National Agreement, utilizes the services of furloughed or extra Mason and Concrete Mechanics to provide relief (i.e. to protect absences account illness or incident to granting vacations) and perform extra work (i.e. as additional force employes on individual projects of brief duration which cannot be accomplished by the basic force. It can be seen from the detailed statement of Strubelt's service for the several months preceding the 1958 Thanksgiving holiday that he was a non-regularly assigned employe providng vacation relief and working as an addition to the force, and therefore was not entitled to holiday pay under Article II, Section 1, of the August 21, 1954 National Agreement."

Then Carrier goes on to say that:

> "A 'regularly assigned' employe is universally understood to refer to an individual who is identified with a specific job for indefinite duration, subject only to displacement by a senior employe or as a result of the job being abolished in accordance with the agreement. Such employes are in an entirely different category from extra or furloughed employes who are assigned to fill the places of regularly assigned employes or to work for brief periods as additions to the force."

For the purposes of this case we will accept Carrier's definition of "regularly assigned"; but, we disagree that employes assigned "to work for brief periods as additions to the force" cannot be held to be "regularly assigned" to a position.

The record reveals that Claimant was not filling the place of any regularly assigned employe. He was assigned to and identified with a specific position for indefinite duration, subject only to displacement by a senior employe or as a result of the job being abolished in accordance with the agreement. That the position was newly created to increase the force for an indefinite period does not detract from Claimant's ownership of the position subject to the contingencies spelled out in Carrier's definition of "regularly assigned." With the Carrier having the right to reduce forces and abolish positions, all positions can be said to be of "indefinite duration." Even bulletined positions designated as permanent may turn out to be "for brief periods as additions to the force."

Carrier would have us equate Claimant's status to that of an extra employe; or, a furloughed employe temporarily filling a positon owned by an absent employe. The record does not support the argument.

We find that, on the holiday in question, Claimant was "regularly assigned" to his position within the meaning of those words as used in Article II, Section 1 of the August 21, 1954 Agreement; and, in all other respects had qualified for holiday pay. We will sustain 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1966.

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