



Award Number 17800

Docket Number TE-17529

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
READING COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Reading Company, that:

1. The Reading Company violated our current Agreement when it failed and/or refused to pay Claimant E. B. Layton holiday pay for Thursday, November 24, 1966 (Thanksgiving).
2. As a consequence of the above violation the Company is required to pay Claimant one (1) day's pay at the pro rata rate of his last extra assignment, third trick towerman, "FS" West Falls, or \$25.43.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute in this claim is predicated upon provisions of an Agreement between the Reading Company, hereinafter referred to as Carrier, and the Transportation-Communication Employees Union, hereinafter referred to as Employees and/or Union, as amended and supplemented, dated April 1, 1946—corrected September 1, 1951—and by this reference is made available to your Board.

The dispute was handled on the property in the usual manner, with conference, up to and including the highest officer of the Carrier designated to handle claims and grievances, and was denied.

Dispute arose when Carrier refused to pay Claimant a day's pay for November 24, 1966 (Thanksgiving Day) as provided in the Holiday Agreement.

(b) ISSUES

1. Did Carrier violate the Agreement when it refused to pay compensation to Claimant for holiday (November 24, 1966, Thanksgiving Day)?
2. Proper compensation for Claimant as provided in Agreement.

(c) FACTS

Claimant E. B. Layton, Extra Towerman at "FS" Tower, third shift, bid on position of ticket and freight agency at Hopewell, New Jersey, and

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.

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(e) HANDLING ON THE PROPERTY

TCU Exhibits 1 through 6 attached.

(f) AUTHORITIES RELIED ON

Third Division, National Railroad Adjustment Board Awards Nos.:

2209 (Swain)	14365 (Lynch)
8324 (McCoy)	14431 (Rambo)
12093 (Wolf)	14515 (Brown)
12180 (Kane)	14516 (Brown)
14325 (Dorsey)	14524 (Brown)
14326 (Dorsey)	14675 (House)

Special Board of Adjustment No. 355 (Lynch) Award No. 272

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: Prior to November 17, 1966, the Claimant E. B. Layton, was an extra employee assigned to "FS" Tower. On November 17, 1966 the Claimant was awarded a regular assignment at Carrier's Hopewell Agency. The Claimant was awarded this position pursuant to Bulletin P-79. The regular assignment involved required a period of "posting" by Claimant in order to become qualified in the performance of the work of the position. In this instance, the Claimant's qualification was confirmed on November 25, 1966.

On November 23, 1966, the day prior to the claimed holiday of November 24, 1966, the Claimant voluntarily laid off and hence did not report for work. There was no compensation accorded to the Claimant for November 23, 1966. Similarly, the Claimant voluntarily laid off on November 24, 1966. In view of these facts, the Carrier did not grant the Claimant a day's holiday pay for November 24, 1966.

The Agreement between Reading Company and the Order of Railroad Telegraphers, effective April 1, 1946, corrected September 1, 1951, is on file with Your Board and is incorporated herein by reference.

OPINION OF BOARD: On November 17, 1966, Claimant was awarded a regular assignment on position of agent Hopewell, New Jersey. Prior thereto he was an extra employee. He was not qualified to assume the full responsibility for his assignment immediately. Therefore, he was required to spend a few days "posting" or learning the details of his new job. He was not paid for this time.

Claimant actually began working his new position, under pay, on November 25, 1966, the day following the Thanksgiving Day holiday. He claimed holiday pay of eight hours, under provisions of Article III, Agreement of August 19, 1960, contending that he was an extra employee on the holiday and, as such, had qualified for the payment claimed.

Carrier declined the claim on the ground that Claimant was a regular assigned employee and, as such, did not qualify for the payment claimed because he had no compensation credited to the day preceding the holiday.

The record shows that the parties have no disagreement about the intent of the agreement provisions involved. Their dispute centers around the status of the Claimant or, more exactly, the question of when did the Claimant cease to be an "extra employee" and become a "regularly assigned employee". This question has to be resolved in order to know which qualifications must be met in order to be entitled to the holiday pay.

We have carefully considered the rather inadequate record, and must conclude that it convinces us that for these parties an "extra" employee who is the successful bidder on a permanent or "regular" assignment becomes a "regularly assigned employee" on the date he is officially awarded the assignment. This seems to be the only conclusion that can be considered compatible with the real contentions of both parties. For example, they are in accord that such an employee should not be disturbed while engaged in "posting" on the position he has bid in. This is inconsistent with the Organization's contention that such an employee remains an "extra". Extra employees have rights that could not be observed without "disturbing" them from "posting". On the other hand, this accord is consistent with Carrier's position that an employee in this situation is a "regularly assigned employee".

Regularly assigned employees are, of course, subject to any and all rules that apply to such employees. This includes the qualifying provisions of Section 3 of the August 21, 1954 Agreement, as amended by Article III of the August 19, 1960 Agreement.

Consistent with this Opinion, Claimant Layton became a "regularly assigned employee" when he was awarded the regular assignment on November 17, 1966. And since the record does not show that compensation was credited to him on the day preceding the holiday, he is not entitled to the payment claimed. See Award 11642.

Obviously, the conclusions announced in this Opinion are confined to the circumstances of this particular case, and are not intended as a general ruling on the point involved. Particular circumstances must be considered in all such cases.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.