Award No. 7430
Docket No. CL-7532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

CASE NO. 1

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Mary B. Swain shall be paid eight (8) hours at the pro rata rate of Position No. 48, Assistant Crew Dispatcher, Colton, California, for July 5, 1954, in accordance with the provisions of Article II, Holidays, of the Agreement signed at Chicago, Illinois, August 21, 1954.

CASE NO. 2

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Cornelius A. Knapp shall be paid eight (8) hours at the pro rata rate of Position No. 62, Yard Crew Dispatcher, Los Angeles, California, for July 5, 1954, in accordance with the provisions of Article II, Holidays, of the Agreement signed at Chicago, Illinois, August 21, 1954.

CASE NO. 3

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

E. N. Grice shall be paid eight (8) hours at the pro rata rate of Position No. 5, Freight and Ticket Clerk, Alhambra, California, for May 31, 1954, in accordance with the provisions of Article II, Holidays, of the Agreement signed at Chicago, Illinois, August 21, 1954.

CASE NO. 4

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Harold E. Earl shall be paid eight (8) hours at pro rata rate of Position No. 7, Claim Clerk, Burbank, California, for September

6, 1954, in accordance with the provisions of Article II, Holidays, of the Agreement signed at Chicago, Illinois, August 21, 1954.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, bearing effective date of October 1, 1940, which Agreement, reprinted January 1, 1953, including revisions, (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claims. There is also in evidence an Agreement between the parties signed at Chicago, Illinois, August 21, 1954, by and between the participating Eastern, Western and Southeastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, which Agreement (hereinafter referred to as the Chicago Agreement) was in effect on the dates involved in the instant claims. A copy of the Agreement and the Chicago Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

CASE NO. 1

2. Position No. 48, Assistant Crew Dispatcher, Colton, California, hours 11:00 P. M., to 7:00 A. M., daily except Tuesday and Wednesday, was established on June 17, 1954. Mary B. Swain (hereinafter referred to as the first Claimant) was assigned to the position on same date and continued to perform service thereon until July 24, 1954, during which time the position was advertised and awarded to a senior employe.

3. The first Claimant fulfilled all the requirements of her assigned position during the period from June 17 to July 24, 1954, and for service performed on Monday, July 5, 1954, a legal holiday by proclamation, she was compensated at the rate of time and one-half. No compensation was allowed at the pro rata rate for the holiday in accordance with Article II, Holidays, of the Chicago Agreement.

The Division Chairman submitted claim on behalf of the first Claimant for eight (8) hours at the pro rata rate of her assigned position for the legal holiday, July 5, 1954, and said claim was denied by the Division Superintendent. Appeal was taken to the Chief Operating Officer designated by the Carrier to handle such disputes and the claim was again denied.

CASE NO. 2

4. Position No. 62, Yard Crew Dispatcher, Los Angeles, California, hours 12:00 midnight, to 8:00 A. M., daily except Tuesday and Wednesday, became vacant on May 16, 1954, account the incumbent assigned to another short vacancy. Cornelius A. Knapp (hereinafter referred to as the second Claimant) was assigned to the position on the same date and continued to perform service thereon until sometime during October 1954, at which time he was displaced therefrom in accordance with the Agreement provisions.

5. The second Claimant fulfilled all the requirements of his assigned position from May 16, 1954, and for service performed on Monday, July 5, a legal holiday by proclamation, he was compensated at the rate of time and one-half. No compensation was allowed at the pro rata rate for the holiday in accordance with Article II, Holidays, of the Chicago Agreement.

The Division Chairman submitted claim on behalf of the second Claimant for eight (8) hours at the pro rata rate of his assigned position for the legal holiday, July 5, 1954, and said claim was denied by the Division Superintendent. Appeal was taken to the Chief Operating Officer designated by the Carrier to handle such disputes and the claim was again denied.

CASE NO. 3

6. Relief Position No. 3, Alhambra, California, scheduled to relieve Position No. 5, Freight and Ticket Clerk, each Monday became vacant on

"Second—From other employes in the seniority district in the order of their seniority.

"(g) The name and seniority date of the successful applicant will be posted for a period of seven (7) calendar days where the position was advertised.

"(h) New positions or vacancies as trucker or laborer will be advertised on appropriate notice, and employes desiring such positions will file their applications for same within seven (7) calendar days and be given preference over junior employes. Notices will show locations, positions, hours of service and rates of pay; however, the provisions of Rule 3 will not apply.

"(Section (e) effective November 16, 1947; Section (d) and Notice to Section (e) effective January 1, 1953)"

To adopt the interpretation the petitioner attempts to place on said agreement provisions by the claim in this docket, an extra unassigned employe would have to be considered both extra and unassigned, a dual capacity diametrically opposed to that contemplated by the agreement.

The petitioner is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claimants were extra unassigned employes, and that, therefore, the claim is without basis under the provisions of Section 1, Article II, of agreement dated August 21, 1954. It is requested that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: Four separate cases are involved in this claim. In each case, an unassigned clerk was assigned temporarily to fill a regular position, and, while filling the position, worked on one of the holidays listed in Article II of the August 21, 1954 Chicago National Agreement.

In Case No. 1, the Claimant was assigned to fill a newly created position pending the bulletining thereof under the rules. She filled the position from June 17 to July 24, 1954, and was then displaced by the employe who was the senior applicant for the position under the bulletin.

In Case No. 2, the Claimant was assigned to fill a regular position which was vacant because the incumbent was filling other positions under Rule 34, which provides that if a qualified unassigned employe is not available to fill a new position or short vacancy, it will be filled by the senior assigned employe who applies. Claimant filled the position from May 16 to November 1, 1954, at which time the regular incumbent returned and displaced him.

In Case No. 3, the Claimant was assigned to fill a regular position which was vacant because of the illness of the incumbent. He filled the position

from May 1 to June 6, 1954, at which time he was displaced by a senior employe under the rules.

In Case No. 4, the Claimant was assigned to fill a regular position while the incumbent was on vacation. He filled the position from August 30 to September 17, 1954.

In each case, the holiday fell on a workday of the workweek of the position Claimant was temporarily filling. In the first three cases, the Claimants worked on the holiday and were compensated at time and one-half; in the fourth case, the Claimant was not required to work on the holiday and received no pay. The claim in each case is for a day's pay at pro rata rate under Article II of the August 21, 1954, National Agreement.

Article II provides:

> "Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employe 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 employe: . . ."

The disputed issue is whether the Claimants were "regularly assigned" within the meaning of the rule. The gist of Claimants' argument is that each of them was properly assigned to a regular position under appropriate Agreement rules, and assumed all the duties, functions and responsibilities of that position. In view of this, they were the employes regularly assigned to those positions on the holidays in question, and therefore they qualified for the pro-rata pay under Article II. That their assignments were temporary, and that they were unassigned employes prior to their temporary assignments and returned to that status upon the appointment or return of the employes who were recognized as the incumbents of the regular positions, did not prevent them from being "regularly assigned" while they were working on these positions.

This argument is not supported by reference to the background out of which Article II developed or to railroad practice generally. It must be conceded that there is a well-recognized difference in railroad parlance between a "regularly assigned" employe and an "unassigned" or "extra" employe. The unassigned employe, by the nature of his status, may be assigned to work temporarily on "regular" positions. But this does not make him a regularly assigned employe on those occasions. The work schedule of an unassigned employe is "irregular" in that he is assigned from time to time to one position or another and cannot depend with certainty upon working a particular amount of time or taking home a particular amount of pay per week or month. A regularly assigned employe, on the other hand, knows that he will work each day on the same job, under similar conditions, and with a stable weekly or monthly income.

It was the latter type of employe who was intended to be covered by Article II, and it was the employe, rather than the position he occupied, for whom the holiday pay was provided. Section 1 of Article II was based upon a recommendation by Emergency Board 106 and this Board in its Report clearly stated that it "was strongly influenced by the desirability of making it possible for the employes to maintain their normal take-home pay in weeks during which a holiday occurs." As said in Second Division Award 2052 in discussing the same rule,

> "Employes who hold no regular assignments do not have a regular or usual amount of take home pay. Their work is dependent upon the occurrence of temporary vacancies, or work of a temporary nature."

In that case, the Claimants were furloughed employes temporarily filling regular positions on holidays. The claims were denied.

A similar claim was denied in Second Division Award 2169. There, after reviewing in detail the background of Section 1 of Article II, the Division said:

> "We think the language used, both in the Board's recommendation and in the agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof."

We find ourselves in agreement with the above-cited Awards. On the basis of the reasoning therein and our own discussion above, we think the claims should be denied.

Claimants also cited Section 3 of Article II in support of their claims. Since Section 3 does not come into play unless the employes are covered by Section 1, it has no bearing upon our decision in this case.

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

That the parties waived hearing on this dispute; and

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 1st day of October, 1956.